

Manchester City Council Report for Resolution

Report to: Standards Committee – 15 March 2018

Subject: Review of Local Government Ethical Standards – Committee on Standards in Public Life, Stakeholder Consultation

Report of: City Solicitor

Summary

This report advises the Standards Committee that the Committee on Standards in Public Life, which advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders, is undertaking a review of local government ethical standards. As part of this review, the Committee on Standards in Public Life is holding a public stakeholder consultation.

Recommendations

The Committee is recommended to:

1. Consider this report and express a view as to whether the Council should take part in the consultation exercise.
 2. If the Committee is of the view that the Council should respond to the consultation to delegate to the City Solicitor in consultation with the Chair of the Standards Committee the drafting of a response that takes into account any comments made by the Committee.
 3. If the Committee is of the view that the Council should respond to the consultation exercise, provide its views as to appropriate responses to the consultation questions.
 4. If the Committee is of the view that the Council should respond to the consultation exercise, provide any further views it may have in response to the consultation.
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Wards Affected: All

Alignment to the Our Manchester Strategy Outcomes (if applicable)

Manchester Strategy outcomes	Summary of how this report aligns to the OMS
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Not directly
A highly skilled city: world class and home grown talent sustaining the city's economic success	Not directly
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Not directly
A liveable and low carbon city: a destination of choice to live, visit, work	Not directly
A connected city: world class infrastructure and connectivity to drive growth	Not directly

Contact Officers:

Name: Jacqui Dennis
Position: City Solicitor
Telephone: 0161 234 3053
E-mail: j.dennis@manchester.gov.uk

Name: Stephen Hollard
Position: Group Manager, Democratic Services
Telephone: 0161 234 3336
E-mail: s.hollard@manchester.gov.uk

Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Manchester City Council's Code of Conduct for Members
- Manchester City Council's Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members

1.0 Introduction

1.1 The Localism Act 2011 fundamentally changed the local authority Standards regime in England. Nearly six years after the new regime came into effect in mid-2012, the Committee on Standards in Public Life, which advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders, is undertaking a review of local government ethical standards. As part of this review, the Committee on Standards in Public Life is holding a public stakeholder consultation. The consultation is open from 12.00 Monday 29th January 2018 and closes 17.00 on Friday 18 May 2018.

1.2 Full details of the consultation can be viewed at: <https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>. A copy of the consultation paper is also included in the Appendix to this report.

2.0 Terms of reference

2.1 The terms of reference for the review are set out in the Consultation paper. The Committee on Standards in Public Life requests that any submission includes any factual information that can be offered in order for the committee to draw conclusions and any recommendations for action which responders would like the Committee to consider.

3.0 The Consultation Questions

3.1 The Committee on Standards in Public Life has posed the following specific questions. Comments of the City Solicitor are provided in *italics* after each question, so as to provide context and assist the Standards Committee in its consideration of the consultation questions.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

Comment: It is considered that the existing structures, processes and practices in place in Manchester City Council work to help ensure high standards of conduct, insofar as is possible given the current statutory ethical standards regime for local government.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Comment: It is considered that, arguably, the most significant gap within the current regime is the lack of significant sanctions that are ultimately available in the event of a finding of a breach of the code of conduct.

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?

Comment: It is considered that Manchester City Council's Code of Conduct for Members, which is based on the former statutory code while necessarily technical in places, is reasonably easily understood by members; although it is acknowledged that it could be simplified in places. It is considered that the Code covers the appropriate range of behaviours in relation to member conduct. Members receive training on conducts issues when they are inducted and the Monitoring Officer issues guidance on specific conduct issues as appropriate. The content of the member induction process is periodically reviewed.

- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Comment: It is considered that these requirements are appropriate as they stand.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?

Comment: It is considered that in Manchester City Council allegations of councillor misconduct are investigated and decided upon fairly and with due process.

- i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?

Comment: Manchester City Council's 'Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members' set out a complaint process consisting of up to three stages – initial assessment; investigation; and hearing (before a Hearing Panel). The Monitoring has produced

procedural guidance for the investigation stage and the Council's Standards Committee has approved a detailed hearing procedure. The investigation guidance has recently been reviewed and updated.

At each stage the both parties are given the opportunity to make representations and submit evidence. The Hearing Panel at the hearing stage is chaired by an independent member of the Standards Committee. One of the Council's two Independent Persons will also be involved at each stage of the member complaint process.

It is considered that the processes in place meet the requirements of due process.

- ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?

Comment: The current requirement in relation to Independent Person involvement, when considered alongside the particular procedures that Manchester City Council has in place, is considered to be sufficient to ensure objectivity and fairness.

- iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Comment: In Manchester the Monitoring Officer does have involvement in decisions-making at certain stages of the member complaints process (for example the Initial Assessment decision is made by the Monitoring Officer in consultation with the Independent Person), although the decision made at the final hearing stage is made by the Hearing Panel. In the event that the Monitoring Officer did consider that there was a risk of a conflict of interest she would recuse herself from involvement in the complaint and the Deputy Monitoring Officer would deal with the matter.

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?

Comment: It is considered that there is a case to be made that the sanctions under the current standards regime are insufficient.

- i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

The sanctions available under Manchester's Arrangements are as follows.

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code, it will –

- *Publish its findings in respect of the Subject Member's conduct;*
And it may -
- *Report its findings to Council for information;*
- *Recommend to Council that the Member be censured;*
- *Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;*
- *Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;*
- *Instruct the Monitoring Officer to arrange training for the Member;*
- *Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;*
- *Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or*
- *Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.*

It is suggested that the deterrent value of these sanctions is limited.

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Comment: It is considered that there may, arguably, be a case for additional and more substantial sanctions, potentially including (in the most serious cases) suspension of a member for a limited period (a sanction that was available under the former local authority standards regime). However, if more substantial sanctions were to be available, there would also have to be corresponding safeguards.

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

Comment: It is considered that the current arrangements are broadly satisfactory.

- i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

Comment: These statutory duties are considered to be broadly appropriate. However, there may be room for improvement around the operation of dispensations.

While government guidance suggests that there should be no need for members to apply for dispensations in respect of the setting of the council tax (where, on the face of it, any member liable for council tax in the area would have a disclosable pecuniary interest) this does not appear to be reflected in the current standards regime. If there is no need for dispensations to be issued in these circumstances this should be clearly stated in legislation.

- ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Comment: In addition to the (statutory) category of "disclosable pecuniary interests" the Council's Code of Conduct also recognises two other categories of interest - "personal interests" and "prejudicial interests."

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Comment: The Council has a Whistleblowing Policy in place. These arrangements are considered satisfactory.

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?

Comment: It is considered that local authorities generally could take steps to increase the visibility of their Member Codes of Conduct and the accessibility of their member complaint processes. Also, many authorities lack an effective filter mechanism for dealing with manifestly groundless complaints made against members.

j. What steps could *central government* take to improve local government ethical standards?

Comment: It is considered that there may be an argument for central government to provide for more substantial sanctions for breaches of the code of conduct (along with appropriate safeguards).

Intimidation of local councillors

k. What is the nature, scale, and extent of intimidation towards local councillors?

Comment: It is noted that members may face intimidation in the course of their duties as councillors, although members may be best placed to comment on the extent of this.

l. What measures could be put in place to prevent and address this intimidation?

Comment: The Committee on Standards in Public Life has published 'Intimidation in Public Life: A Review by the Committee on Standards in Public Life', which may be of interest to the Standards Committee (and is the subject of a separate report before it).

4.0 Recommendations

1. Consider this report and express a view as to whether the Council should take part in the consultation exercise.
2. If the Committee is of the view that the Council should respond to the consultation to delegate to the City Solicitor in consultation with the Chair of the Standards Committee the drafting of a response that takes into account any comments made by the Committee.
3. If the Committee is of the view that the Council should respond to the consultation exercise, provide its views as to appropriate responses to the consultation questions.
4. If the Committee is of the view that the Council should respond to the consultation exercise, provide any further views it may have in response to the consultation.

Review of Local Government Ethical Standards: Stakeholder Consultation

The Committee on Standards in Public Life is undertaking a review of local government ethical standards.

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

As part of this review, the Committee is holding a public stakeholder consultation. The consultation is open from 12:00 on Monday 29 January 2018 and closes at 17:00 on Friday 18 May 2018.

Terms of reference

The terms of reference for the review are to:

1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
3. Make any recommendations for how they can be improved; and
4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London).

Local government ethical standards are a devolved issue. The Committee's remit does not enable it to consider ethical standards issues in devolved nations in the UK except with the agreement of the relevant devolved administrations. However, we welcome any evidence relating to local government ethical standards in the devolved nations of the UK, particularly examples of best practice, for comparative purposes.

Submissions will be published online alongside our final report, with any contact information (for example, email addresses) removed.

Consultation questions

The Committee invites responses to the following consultation questions.

Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to

give evidence about only one local authority, several local authorities, or local government in England as a whole. Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
 - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?
 - ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
- l. What measures could be put in place to prevent and address this intimidation?

Who can respond?

Anyone with an interest may make a submission. The Committee welcomes submissions from members of the public.

However, the consultation is aimed particularly at the following stakeholders, both individually and corporately:

- Local authorities and standards committees;
- Local authority members (for example, Parish Councillors, District Councillors);
- Local authority officials (for example, Monitoring Officers);
- Think tanks with an interest or expertise in local government;
- Academics with interest or expertise in local government; and
- Representative bodies or groups related to local government.

How to make a submission

Submissions can be sent either in electronic format or in hard copy.

Submissions must:

- State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;
- Include a brief introduction about yourself/your organisation and your reason for submitting evidence;
- Be in doc, docx, rtf, txt, ooxml or odt format, not PDF;
- Be concise – we recommend no more than 2,000 words in length; and
- Contain a contact email address if you are submitting by email.

Submissions should:

- Have numbered paragraphs; and
- Comprise a single document. If there are any annexes or appendices, these should be included in the same document.

It would be helpful if your submission included any factual information you have to offer from which the Committee might be able to draw conclusions, and any recommendations for action which you would like the Committee to consider.

The Committee may choose not to accept a submission as evidence, or not to publish a submission even if it is accepted as evidence. This may occur where a submission is very long or contains material which is inappropriate.

Submissions sent to the Committee after the deadline of 17:00 on Friday 18 May 2018 may not be considered.

Submissions can be sent:

1. Via email to: public@public-standards.gov.uk
2. Via post to:
Review of Local Government Ethical Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London

SW1A 2HQ

If you have any questions, please contact the Committee's Secretariat by email (public@public-standards.gov.uk) or phone (0207 271 2948).