

Public Document Pack



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

Dear Councillor

The next meeting of the **ACCOUNTS AND AUDIT** Committee will be held at **6.30 pm** on **WEDNESDAY, 28 SEPTEMBER 2022** in the **Council Chamber, 13 Church Street, Clitheroe, BB7 2DD.**

I do hope you can be there.

Yours sincerely

M. H. Scott

CHIEF EXECUTIVE

AGENDA

1. **APOLOGIES FOR ABSENCE**
2. **TO APPROVE THE MINUTES OF THE PREVIOUS MEETING** (Pages 3 - 6)
3. **DECLARATIONS OF DISCLOSABLE PECUNIARY, OTHER REGISTRABLE AND NON REGISTRABLE INTERESTS**

Members are reminded of their responsibility to declare any disclosable pecuniary, other registrable or non-registrable interest in respect of matters contained in the agenda.

4. **PUBLIC PARTICIPATION**

ITEMS FOR DECISION

5. **LOCAL CODE OF CORPORATE GOVERNANCE** (Pages 7 - 28)
Report of the Director of Resources enclosed.
6. **CIPFA POSITION STATEMENT** (Pages 29 - 36)
Report of the Director of Resources enclosed.
7. **CONSULTATION ON THE 2022/23 AUDIT FEE SCALE FOR OPTED-IN BODIES** (Pages 37 - 54)
Report of the Director of Resources enclosed.
8. **DRAFT RISK MANAGEMENT POLICY** (Pages 55 - 68)
Report of the Director of Resources enclosed.

ITEMS FOR INFORMATION

9. **GOVERNMENT RESPONSE TO THE CSPL REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS** (Pages 69 - 196)
Report of Chief Executive enclosed.
10. **OMBUDSMAN REPORT** (Pages 197 - 232)
Report of the Chief Executive enclosed.
11. **AUDIT PROGRESS REPORT (REPORT OF GRANT THORNTON)** (Pages 233 - 250)
Report of Grant Thornton enclosed.
12. **COUNTER FRAUD, BRIBERY AND CORRUPTION POLICY STATEMENT AND STRATEGY** (Pages 251 - 262)
Report of the Director of Resources enclosed.
13. **INTERNAL AUDIT PROGRESS REPORT** (Pages 263 - 270)
Report of the Director of Resources enclosed.
14. **DISPOSAL OF ASSETS** (Pages 271 - 272)
Report of the Director of Resources enclosed.
15. **STATEMENT OF ACCOUNTS 2021/22 PROGRESS** (Pages 273 - 274)
Report of the Director of Resources enclosed.
16. **REPORTS FROM REPRESENTATIVES ON OUTSIDE BODIES**
None.
17. **EXCLUSION OF PRESS AND PUBLIC**
None.

Electronic agendas sent to members of Accounts and Audit – Councillor David Berryman (Chair), Councillor Susan Bibby, Councillor Judith Clark, Councillor Kerry Fletcher, Councillor Stewart Fletcher, Councillor Jonathan Hill, Councillor Richard Newmark, Councillor David Peat OBE, Councillor James (Jim) Rogerson, Councillor Richard Sherras and Councillor Robin Walsh (Vice-Chair).

Contact: Democratic Services on 01200 414408 or committee.services@ribblevalley.gov.uk

Minutes of Accounts and Audit

Meeting Date: Wednesday, 29 June 2022, starting at 6.30 pm
Present: Councillor D Berryman (Chair)

Councillors:

S Bibby	J Rogerson
K Fletcher	R Sherras
R Newmark	R Walsh
D Peat	

In attendance: Director of Resources, Head of Financial Services, Internal Audit Manager, Head of Legal and Democratic Services and Sophia Iqbal (Grant Thornton)

148 APOLOGIES FOR ABSENCE

Apologies for absence were received for the meeting from Councillors J Clark, S Fletcher and J Hill.

149 TO APPROVE THE MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 6 April 2022 were approved as a correct record and signed by the Chairman.

150 DECLARATIONS OF DISCLOSABLE PECUNIARY, OTHER REGISTRABLE AND NON REGISTRABLE INTERESTS

There were no declarations of disclosable pecuniary, other registrable or non-registrable interests.

151 PUBLIC PARTICIPATION

There was no public participation.

152 INFORMING THE AUDIT RISK ASSESSMENT 2021/22

The Director of Resources submitted a report informing members of the responses made by management in response to several questions raised by Grant Thornton. The questions covered important areas of the auditor risk assessment where there was a requirement to make inquiries of the Accounts and Audit committee under auditing standards.

Members were informed that the two-way communication assisted both the auditor and the committee in understanding matters relating to the audit and developing a constructive working relationship, as well as the committee fulfilling its responsibilities in relation to the financial reporting process.

The document covered a series of questions to management of the council covering:

- General Enquiries of Management
- Fraud
- Laws and Regulations
- Related Parties
- Going concern
- Accounting Estimates

Committee were asked to consider the responses and whether they were consistent with its undertaking.

Several questions were asked on the issues that had been raised by the external auditors and assurances were given by the officers.

RESOLVED THAT COMMITTEE:

Note and acknowledge the responses made to the Grant Thornton document 'Informing the audit risk assessment for Ribble Valley Borough Council 2021/22'.

153

DRAFT INTERNAL AUDIT PLAN 2022/23

The Director of Resources submitted a report presenting the Strategic Internal Audit Plan for 2022/23 to 2024/25 for consideration and approval of committee.

The plan defined the scope and rationale behind each of the individual assignments and the resource requirements to deliver it. It also provided reassurance to the chief executive, s151 officer, senior managers and other stakeholders regarding the effectiveness of controls and management of risk.

Committee were reminded that it was their responsibility to monitor internal audit progress in achieving the Annual Audit Plan, evaluating the effectiveness of internal audit, the use of resources and where necessary recommending adjustments to the plan.

Committee were informed that the anticipated audit resources were considered sufficient to deliver the effective 3-year plan and that in 2022/23 the estimated resource was 656; with 409 days available to undertake the risk-based plan.

It was noted however that this was based on the assumption that the current vacant post in the internal audit section would be successfully recruited to by October 2022. If this was not the case then it would be necessary to engage other resources.

The plan focussed on the Council's risk register as this represented their own assessment of the risks to achieving the Corporate Strategy (2019 to 2023). It had been developed through a detailed risk assessment, mandated/core system requirements in compliance with PSIAS and consultations with senior management, directors and heads of service, with formal approval from the Corporate Management Team.

RESOLVED THAT COMMITTEE:

Approve the Strategic Internal Audit Plan 2022/23 to 2024/25.

154

INTERNAL AUDIT PROGRESS REPORT - JUNE 2022

The Director of Resources submitted a report outlining the progress on the internal audit as of June 2022 for consideration and approval by committee.

Since the last meeting of committee, a number of areas had been a key focus, and had received substantial/high/moderate assurances. Priority had been given to performing core system work to enable the annual audit opinion to be reached.

The report also included a summary of internal audit recommendations due for implementation, and where agreed actions had not yet been implemented in line with timescales, discussions would take place with management.

An annual assessment of the effectiveness of the Internal Audit Service was also required to conform with the PSIAS. An initial self-assessment had been undertaken by the Internal Audit Manager but an external assessment would also be required and commissioned.

The report outlined the summary of conformance against the PSIAS based on the initial self-assessment. Seven recommendations had been made; six relating to partial compliance and the one regarding the external assessment that had not taken place in 5 years.

The report also suggested changes to assurance definitions and proposed performance indicators to ensure they meet the Standards and address the risks associated with the control environment.

RESOLVED THAT COMMITTEE:

Note the report and approve the changes in assurance definitions and proposed performance indicators.

155 ANNUAL INTERNAL AUDIT OPINION 2021/22

The Director of Resources submitted a report for information providing the committee with an independent opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and internal control; including a summary of the internal audit work that supports the Opinion: any impairments or restrictions in scope of work undertaken; and the outcomes of the self-assessment that the audit work undertaken was in conformance with the Public Sector Internal Audit Standards (PSIAS) for 2021/22.

The overall opinion of the Internal Audit Manager for the period 1 April 2021 to 31 March 2022 was substantial.

Committee noted that although the audit work that supported the opinion had been delivered in accordance with the Public Sector Internal Audit Standards, and there were no significant areas of non-conformance, that an improvement plan was in place to ensure full compliance.

156 AUDIT PLAN - YEAR ENDING 31 MARCH 2022

The Ribble Valley Borough Council audit plan for year ending 31 March 2022 was presented for information by Grant Thornton.

Sophia Iqbal highlighted the significant risks, materiality, value for money arrangements and audit logistics.

Members asked questions regarding audit fees, and the progress against prior year audit recommendations and the actions taken into relation to these.

157 REPORTS FROM REPRESENTATIVES ON OUTSIDE BODIES

There were no reports from representatives on outside bodies.

EXCLUSION OF PRESS AND PUBLIC

There were no items under this heading.

The meeting closed at 7.10 pm

If you have any queries on these minutes please contact the committee clerk, Olwen Heap 01200 414408 olwen.heap@ribblevalley.gov.uk.

**RIBBLE VALLEY BOROUGH COUNCIL
REPORT TO ACCOUNTS & AUDIT COMMITTEE**

meeting date: 28 SEPTEMBER 2022
title: LOCAL CODE OF CORPORATE GOVERNANCE
submitted by: DIRECTOR OF RESOURCES
principal author: INTERNAL AUDIT MANAGER

1. PURPOSE

1.1. To consider the revised Local Code of Corporate Governance.

1.2. Relevance to the Council's ambitions and priorities:

- Community Objectives – none identified.
- Corporate Priorities – a well-managed Council.
- Other Considerations – none identified.

2. BACKGROUND

2.1. The CIPFA/Solace publication 'Delivering Good Governance in Local Government' highlights that it is crucial that governance arrangements are applied in a way that demonstrates the 'spirit and ethos' of good governance, which cannot be achieved only through rules and procedures.

2.2. Effectively, the CIPFA/Solace publication is referring to the fact that good governance needs to be embedded within an organisation. It needs to be within every aspect of the council's culture.

2.3. One of the ways in which this culture is guided within the council is through the annual review and publication of our Local Code of Corporate Governance, which is reviewed and approved annually by this committee. The Local Code of Corporate Governance is the council's **forward-looking** statement of how the governance culture of the organisation will be driven.

2.4. Within a framework of seven core principles, the Code looks to steer the application of good governance in everything that members and staff undertake by highlighting how their work on behalf of the council will be approached.

2.5. Through the approval of the Code, the council is demonstrating that in everything it undertakes, its members and staff will:

- Behave with integrity, demonstrating strong commitment to ethical values and respecting the rule of the law;
- Ensure openness and comprehensive stakeholder engagement;
- Define outcomes in terms of sustainable economic, social and environmental benefits;
- Determine the interventions necessary to optimise the achievement of intended outcomes;
- Develop the council's capacity, including the capability of its leadership and the individuals within it;
- Manage risk and performance through robust internal control and strong public financial management; and

- Implement good practices in transparency, reporting and audit to deliver effective accountability.

3. ANNUAL REVIEW OF THE LOCAL CODE OF CORPORATE GOVERNANCE

- 3.1. An annual review of the council's Code has been undertaken and is attached at Annex A. There are no further changes proposed to the Local Code of Corporate Governance that is currently in place.
- 3.2. The document clearly communicates the key Governance principles and the expected 'behaviours' or culture that the CIPFA/Solace publication 'Delivering Good Governance in Local Government' would expect of an organisation such as our own.
- 3.3. Also within the document is a clear linkage to how such 'behaviours' or culture can be evidenced within the council, principle by principle.
- 3.4. The format of the document also links closely with the structure of the Annual Governance Statement. The Annual Governance Statement is the **backward-looking** review of how the council has performed or acted in relation to the principles that it said it would abide by as detailed within the Local Code of Corporate Governance at the beginning of the year. Approval of the Annual Governance statement will be sought at your next meeting in November, when approval of the Statement of Accounts will also be requested.
- 3.5. As such the Local Code of Corporate Governance is the council's **forward-looking** statement of how the governance culture of the organisation will be driven.
- 3.6. The Local Code of Corporate Governance is also published on the council's website.

4. EMBEDDING THE LOCAL CODE OF CORPORATE GOVERNANCE

- 4.1. As referred to above, and within the CIPFA/Solace publication 'Delivering Good Governance in Local Government', good governance cannot be achieved only through rules and procedures, and it must be embedded within the culture of the council.
- 4.2. As such we will endeavour to raise awareness levels with staff and members, covering the seven principles and the manner in which we will approach our work as detailed within the Code. As a result we hope to further strengthen this aspect of the council's culture.

5. RISK ASSESSMENT

- 5.1 The approval of this report may have the following implications:
 - Resources – there are no additional resources implications as a direct result of this report.
 - Technical, Environmental and Legal – None
 - Political – None
 - Reputation – The Council must ensure that it has a sound system of internal control in place. Failing to adhere to the principles detailed in the Local Code of Corporate Governance has the potential to significantly harm the reputation of the council.
 - Equality & Diversity – None

6. RECOMMENDED THAT COMMITTEE

- 6.1 Approve the attached reviewed Local Code of Corporate Governance, which is attached at Annex A.

INTERNAL AUDIT MANAGER

DIRECTOR OF RESOURCES

AA20-22/RP/AC
16 September 2022

BACKGROUND PAPERS

None

Local Code of Corporate Governance

September 2022



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

Local Code of Corporate Governance

Contents

Section	Page
Introduction	2
Benefits of a Code of Corporate Governance	3
PRINCIPLE A: Behaving with integrity, demonstrating strong commitment to ethical values and respecting rules of law	4
PRINCIPLE B: Ensuring openness and comprehensive stakeholder engagement	6
PRINCIPLE C: Defining outcomes in terms of sustainable economic, social, and environmental benefits	8
PRINCIPLE D: Determining the interventions necessary to optimise the achievement of the intended outcomes	9
PRINCIPLE E: Developing the entity's capacity, including the capability of its leadership and the individuals within it	11
PRINCIPLE F: Managing risks and performance through robust internal control and strong public financial management	13
PRINCIPLE G: Implementing good practices in transparency, reporting, and audit to deliver effective accountability	15

Local Code of Corporate Governance

Introduction

Corporate Governance is the system by which the Council directs and controls its functions and relates to the community. The Code of Corporate Governance sets out the Council's governance standards. These standards ensure the Council is doing the right things, in the right way in a timely, inclusive, open, effective, honest and accountable manner.

The Council has accepted the definition of Governance as stated within the CIPFA/SOLACE Framework:

Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved.

To deliver good governance in the public sector, both governing bodies and individuals working for public sector entities must try to achieve their entities objectives while acting in the public interest at all times.

Acting in the public interest implies primary consideration of the benefits for society, which should result in positive outcomes for service users and other stakeholders.

The Council has developed and adopted a local code of corporate governance which reflects the key components as set out in the CIPFA/SOLACE Delivering Good Governance in Local Government Framework 2016.

The guidance defines the seven core principles, each supported by sub-principles that then underpin our governance framework.

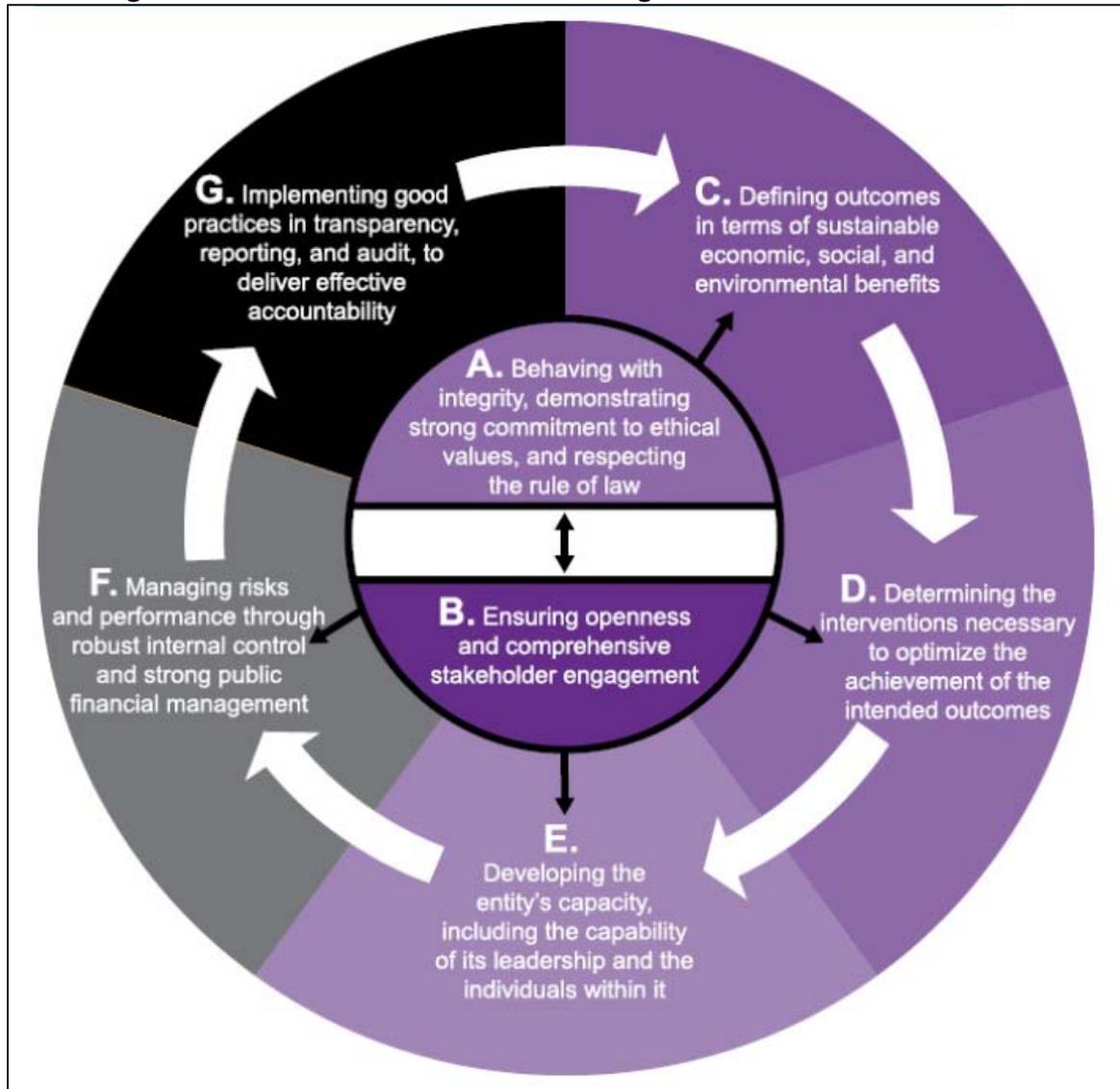
- Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law.
- Ensuring openness and comprehensive stakeholder engagement.
- Defining outcomes in terms of sustainable economic, social and environmental benefits.
- Determining the interventions necessary to optimise the achievement of the intended outcomes.
- Developing the council's capacity, including the capability of its leadership and the individuals within it.
- Managing risks and performance through robust internal control and strong public financial management.
- Implementing good practices in transparency, reporting, and audit to deliver effective accountability.

Full details of these principles and the actions we will take to ensure that we fulfil their requirements are given at the end of this Code. We also outline how we evidence that we are satisfying such requirements.

Local Code of Corporate Governance

The diagram below is taken from the International Framework and illustrates the various principles of good governance in the public sector and how they relate to each other.

Achieving the Intended Outcomes While Acting in the Public Interest at all Times



Benefits of a Code of Corporate Governance

The documents and arrangements set out in the framework within this code demonstrate that the council continually seeks to ensure it remains well governed and that to deliver good governance the Council must seek to achieve its objectives whilst acting in the public interests at all times.

The Internal Audit team is responsible for ensuring that the Code is reviewed annually as part of the preparation of the Annual Governance Statement. Any revisions to the Code are reported to the Accounts and Audit Committee for approval as part of this process.

Local Code of Corporate Governance

PRINCIPLE A: Behaving with integrity, demonstrating strong commitment to ethical values and respecting rules of law

We are accountable not only for how much we spend, but also for how we use the resources under our stewardship. This includes accountability for outputs, both positive and negative, and for the outcomes we have achieved. In addition, we have an overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies.

It is essential that we can demonstrate the appropriateness of all our actions across all activities and have mechanisms in place to encourage and enforce adherence to ethical values and to respect the rule of law.

What we will do:	How this will be evidenced:
<p>Behaving with Integrity:</p> <ul style="list-style-type: none"> - ensure members and officers behave with integrity and lead a culture where acting in the public interest is visibly and consistently demonstrated thereby protecting the reputation of the council. - ensure that members take the lead in establishing specific standard operating principles or values for the council and its staff and that they are communicated and understood. These will build on the Seven Principles of Public Life (the Nolan Principles). - lead by example and use the above standard operating principles or values as a framework for decision making and other actions. - demonstrate, communicate and embed our standard operating principles and values through our policies and processes - which will be reviewed on a regular basis to ensure that they are operating effectively. 	<ul style="list-style-type: none"> • Corporate Strategy • Council Constitution • Standing Orders • Officer Delegation Scheme • Code of Corporate Governance • Members' Code of Conduct • Code of Conduct for Staff • Safeguarding Policy • Complaints Procedure • Anti-Fraud & Corruption Policy • Whistleblowing Policy • Appraisal Scheme • Induction Process – Members & Officers • Training Records • Gifts & Hospitality Register • Register of Interests – Members & Officers • Annual Governance Statement

Local Code of Corporate Governance

What we will do:	How this will be evidenced:
<p>Demonstrating Strong Commitment to Ethical Values:</p> <ul style="list-style-type: none"> - seek to establish, monitor and maintain the council's ethical standards and performance. - underpin personal behaviour with ethical values and ensure they permeate all aspects of the council's culture and operation. - develop and maintain robust policies and procedures which place emphasis on agreed ethical values - ensure that external providers of services on behalf of the council are required to act with integrity and in compliance with ethical standards expected by the council 	<ul style="list-style-type: none"> • Council Constitution • Financial Regulations • Code of Corporate Governance • Members' Code of Conduct • Code of Conduct for Staff • Complaints Procedure • Appraisal Scheme • Procurement Strategy • Standard Terms & Conditions of Purchase • Recruitment & Selection Policy • IT Security Policy • Freedom of Information Publication Scheme • Election guidance
<p>Respecting the rule of law:</p> <ul style="list-style-type: none"> - ensure members and staff demonstrate a strong commitment to the rule of the law as well as adhering to relevant laws and regulations - create the conditions to ensure that the statutory officers, other key post holders, and members, are able to fulfil their responsibilities in accordance with legislative and regulatory requirements - strive to optimise the use of the full powers available for the benefit of citizens, communities and other stakeholders - deal with breaches of legal and regulatory provisions effectively - ensure corruption and misuse of power are dealt with effectively 	<ul style="list-style-type: none"> • Council Constitution • CIPFA's Statement on the Role of the Chief Financial Officer in Local Government completed as part of the Corporate Governance Review. • Officer Delegation Scheme • Powers of the Council and its committees • Anti-Fraud & Corruption Policy • Complaints Procedure

Local Code of Corporate Governance

PRINCIPLE B: Ensuring openness and comprehensive stakeholder engagement

The council is run for the public good, therefore we look to ensure openness in our activities. We look to ensure clear, trusted channels of communication and consultation are used to engage effectively with all groups of stakeholders, such as individual citizens and service users, as well as institutional stakeholders.

What we will do:	How this will be evidenced:
<p>Openness</p> <ul style="list-style-type: none"> - ensure an open culture through demonstrating, documenting and communicating the council's commitment to openness. - make decisions that are open about actions, plans, resource use, forecasts, outputs and outcomes. The presumption is for openness. If that is not the case, we will look to provide a justification for the reasoning for keeping a decision confidential. - provide clear reasoning and evidence for decisions in both public records and explanations to stakeholders and be explicit about the criteria, rationale and considerations used. In due course, we will ensure that the impact and consequences of those decisions are clear - use formal and informal consultation and engagement to determine the most appropriate and effective interventions/ courses of action. 	<ul style="list-style-type: none"> • Council Constitution • Freedom of Information Act • Council's website • Corporate Strategy • Ribble Valley Citizens Panel • Reports and Minutes of Meetings are held on the Council's website. • Standing Orders • Community Strategy • Communications Strategy • New Deal for Greater Lancashire • Annual Governance Statement
<p>Engaging comprehensively with institutional stakeholders:</p> <ul style="list-style-type: none"> - effectively engage with institutional stakeholders to ensure that the purpose, objectives and intended outcomes for each stakeholder relationship are clear so that outcomes are achieved successfully and sustainably. - develop formal and informal partnerships to allow for resources to be used more efficiently and outcomes achieved more effectively. - ensure that partnerships are based on: <ul style="list-style-type: none"> • trust • a shared commitment to change • a culture that promotes and accepts challenge among partners <p>and that the added value of partnership working is explicit.</p>	<ul style="list-style-type: none"> • Ribble Valley Citizens Panel • Community Strategy • Financial Regulations • Communications Strategy

Local Code of Corporate Governance

What we will do:	How this will be evidenced:
<p>Engaging with individual citizens and service users effectively:</p> <ul style="list-style-type: none"> - establish a clear policy on the type of issues that the council will meaningfully consult with or involve communities, individual citizens, service users and other stakeholders to ensure that service (or other) provision is contributing towards the achievement of intended outcomes - ensure that communication methods are effective and that members and officers are clear about their roles with regard to community engagement - encourage, collect and evaluate the views and experiences of communities, citizens, service users and organisations of different backgrounds including reference to future needs. - implement effective feedback mechanisms in order to demonstrate how views have been taken into account. - balance feedback from more active stakeholder groups with other stakeholder groups to ensure inclusivity. - take account of the impact of decisions on future generations of tax payers and service users. 	<ul style="list-style-type: none"> • Community Strategy • Financial Regulations • Communications Strategy • Annual Report on Member's Allowances • Annual Pay Policy Statement • Freedom of Information Publication Scheme • Statement of Accounts • Anti-Fraud Bribery and Corruption Policy • External assessment of Accounts

Local Code of Corporate Governance

PRINCIPLE C: Defining outcomes in terms of sustainable economic, social, and environmental benefits

The long-term nature and impact of the Council's responsibilities mean that we should define and plan outcomes and that these should be sustainable. Decisions should further our purpose, contribute to intended benefits and outcomes, and remain within the limits of authority and resources. Input from all groups of stakeholders, including citizens, service users, and institutional stakeholders, is vital to the success of this process and in balancing competing demands when determining priorities for the finite resources available.

What we will do:	How this will be evidenced:
<p>Defining outcomes</p> <ul style="list-style-type: none"> - have a clear vision, which is an agreed formal statement of the Council's purpose and intended outcomes containing appropriate performance indicators, which provide the basis for the overall strategy, planning and other decisions. - specify the intended impact on, or changes for, stakeholders including citizens and service users. It could be immediately or over the course of a year or longer. - deliver defined outcomes on a sustainable basis within the resources that will be available. - identify and manage risks to the achievement of outcomes. - manage service users' expectations effectively with regard to determining priorities and making the best use of the resources available. 	<ul style="list-style-type: none"> • Corporate Strategy • Core Strategy • Community Strategy • Risk Management Policy • Performance Indicators • New Deal for Greater Lancashire • Budget monitoring reports • Statement of Accounts • External Audit Letter and reports • External inspections • Treasury Management Strategy • Procurement Strategy
<p>Sustainable economic, social and environmental benefits:</p> <ul style="list-style-type: none"> - consider and balance the combined economic, social and environmental impact of policies and plans when taking decisions about service provision. - take a longer-term view with regard to decision making, taking account of risk and acting transparently where there are potential conflicts between the Council's intended outcomes and short-term factors such as the political cycle or financial constraints. - determine the wider public interest associated with balancing conflicting interests between achieving the various economic, social and environmental benefits, through consultation where possible, in order to ensure appropriate trade-offs. - ensure fair access to services 	<ul style="list-style-type: none"> • Capital Programme • Council Constitution • Officer Delegation Scheme • Ribble Valley Citizens Panel • Equality Duty

Local Code of Corporate Governance

PRINCIPLE D: Determining the interventions necessary to optimise the achievement of the intended outcomes

The Council achieves its intended outcomes by providing a mixture of legal, regulatory, and practical interventions (courses of action). Determining the right mix of these courses of action is a critically important strategic choice that the Council has to make to ensure intended outcomes are achieved. There needs to be robust decision-making mechanisms to ensure that our defined outcomes can be achieved in a way that provides the best trade-off between the various types of resource inputs while still enabling effective and efficient operations. Decisions made need to be reviewed frequently to ensure that achievement of outcomes is optimised.

What we will do:	How this will be evidenced:
<p>Determining interventions:</p> <ul style="list-style-type: none"> - ensure decision makers receive objective and rigorous analysis of a variety of options indicating how intended outcomes would be achieved and associated risks. Therefore ensuring best value is achieved. - consider feedback from citizens and service users when making decisions about service improvements or where services are no longer required in order to prioritise competing demands within limited resources available including people, skills, land and assets and bearing in mind future impacts. 	<ul style="list-style-type: none"> • Standing Orders • Community Strategy • Minutes of Meetings are held on the Council's website. • Corporate Strategy • Highlight Reports to Service Committees • Emergency Plan • Anti-Fraud Bribery and Corruption Policy
<p>Planning interventions:</p> <ul style="list-style-type: none"> - establish and implement robust planning and control cycles that cover strategic and operational plans, priorities and targets. - engage with internal and external stakeholders in determining how services and other courses of action should be planned and delivered. - consider and monitor risks facing each partner when working collaboratively, including shared risks. - ensure arrangements are flexible and agile so that the mechanisms for delivering goods and services can be adapted to changing circumstances. - establish appropriate key performance indicators (KPIs) as part of the planning process in order to identify how the performance of services and projects is to be measured. - ensure capacity exists to generate the information required to review service quality regularly. - prepare budgets in accordance with objectives, strategies and the medium term financial strategy. 	<ul style="list-style-type: none"> • Communications Strategy • Financial Regulations • Risk Management Policy • Performance Indicators • Revenue Budget • Medium Term Financial Strategy • Capital Programme

Local Code of Corporate Governance

<p>- inform medium and long term resource planning by drawing up realistic estimates of revenue and capital expenditure aimed at developing a sustainable funding strategy.</p>	
<p>What we will do:</p>	<p>How this will be evidenced:</p>
<p>Optimising achievement of intended outcomes:</p> <ul style="list-style-type: none"> - ensure the medium term financial strategy integrates and balances service priorities, affordability and other resource constraints. - ensure the budgeting process is all-inclusive, taking into account the full cost of operations over the medium and longer term. - ensure the medium term financial strategy sets the context for ongoing decisions on significant delivery issues or responses to changes in the external environment that may arise during the budgetary period in order for outcomes to be achieved while optimising resource usage. - ensure the achievement of 'social value' through service planning and commissioning. 	<ul style="list-style-type: none"> • Medium Term Financial Strategy • Budget Working Group • Capital Programme

Local Code of Corporate Governance

PRINCIPLE E: Developing the entity’s capacity, including the capability of its leadership and the individuals within it

The Council needs appropriate structures and leadership, as well as people with the right skills, appropriate qualifications and mindset, to operate efficiently and effectively and achieve intended outcomes within the specified periods. We must ensure that we have both the capacity to fulfil our mandate and to make certain that there are policies in place to guarantee that management has the operational capacity for the organisation as a whole.

Because both individuals and the environment in which we operate will change over time, there is a continuous need for us to develop our capacity as well as the skills and experience of individual staff members. Leadership in the Council is strengthened by the participation of people with many different types of backgrounds, reflecting the structure and diversity of communities.

What we will do:	How this will be evidenced:
<p>Developing the entity’s capacity:</p> <ul style="list-style-type: none"> - review operations, performance and use of assets on a regular basis to ensure their continuing effectiveness. - improve resource use through appropriate application of techniques such as benchmarking and other options in order to determine how resources are allocated so that defined outcomes are achieved effectively and efficiently. - recognise the benefits of partnerships and collaborative working where added value can be achieved. - develop and maintain an effective workforce plan to enhance the strategic allocation of resources. 	<ul style="list-style-type: none"> • Council Constitution • Appraisal Scheme • Performance Indicators • Capital Programme • Workforce Profile Report • Corporate Training • Training Policy • Induction Process – Members & Officers • Reports to Personnel Committee/ working group

Local Code of Corporate Governance

Developing the capability of the entity's leadership and other individuals:

- develop protocols to ensure that elected and appointed leaders negotiate with each other regarding their respective roles early on in the relationship and that a shared understanding of roles and objectives is maintained.

- publish a statement that specifies the types of decisions that are delegated and those reserved for the collective decision making of Full Council.

- ensure the leader and the chief executive have clearly defined and distinctive leadership roles within a structure whereby the chief executive leads in implementing strategy and managing the delivery of services and other outputs set by members and each provides a check and a balance for each other's authority.

- develop the capabilities of members and senior management to achieve effective leadership and to enable the organisation to respond successfully to changing legal and policy demands as well as economic, political and environmental changes and risks by:

- ensuring members and staff have access to appropriate induction tailored to their role and that ongoing training and development matching individual and organisational requirements is available and encouraged
- ensuring members and officers have the appropriate skills, knowledge, resources and support to fulfil their roles and responsibilities and ensuring that they are able to update their knowledge on a continuing basis
- ensuring personal, organisational and system-wide development through shared learning, including lessons learnt from governance weaknesses both internal and external

- ensure that there are structures in place to encourage public participation.

- take steps to consider the leadership's own effectiveness and ensuring leaders are open to constructive feedback from peer review and inspections.

- hold staff to account through regular performance reviews which take account of training or development needs.

- ensure arrangements are in place to maintain the health and wellbeing of the workforce and support individuals in maintaining their own physical and mental wellbeing

- [Council Constitution](#)
- [Officer Delegation Scheme](#)
- [Financial Regulations](#)
- [Standing Orders](#)
- [Protocol for Member and Officer Relations](#)
- Publication Subscriptions
- Induction Schemes
- Appraisal Scheme
- Training Records
- Training Policy
- [Ribble Valley Citizens Panel](#)
- Human Resources Policies
- Internet/ E-mail Acceptable Use Policy
- [Annual Pay Policy Statement](#)

Local Code of Corporate Governance

PRINCIPLE F: Managing risks and performance through robust internal control and strong public financial management

The Council needs to ensure that the governance structures that it oversees have implemented, and can sustain, an effective performance management system that facilitates effective and efficient delivery of planned services. Risk management and internal control are important and integral parts of a performance management system and are crucial to the achievement of outcomes. Risk should be considered and addressed as part of all decision making activities. A strong system of financial management is essential for the implementation of policies and the achievement of intended outcomes, as it will enforce financial discipline, strategic allocation of resources, efficient service delivery and accountability. It is also essential that a culture and structure for scrutiny are in place as a key part of accountable decision making, policy making and review. A positive working culture that accepts, promotes and encourages constructive challenge is critical to successful scrutiny and successful service delivery. Importantly, this culture does not happen automatically, it requires repeated public commitment from those in authority.

What we will do:	How this will be evidenced:
<p>Managing risk:</p> <ul style="list-style-type: none"> - recognise that risk management is an integral part of all activities and must be considered in all aspects of decision making. - implement robust and integrated risk management arrangements and ensure that they are working effectively. - ensure that responsibilities for managing individual risks are clearly allocated. 	<ul style="list-style-type: none"> • Risk Management Policy • Grace Risk Management System • Annual Governance Statement • Director Assurance Statements
<p>Managing performance:</p> <ul style="list-style-type: none"> - monitor service delivery effectively including planning, specification, execution and independent post implementation review. - make decisions based on relevant, clear objective analysis and advice pointing out the implications and risks inherent in the organisation's financial, social and environmental position and outlook. - encourage effective and constructive challenge and debate on policies and objectives to support balanced and effective decision making. - provide members and senior management with regular reports on service delivery plans and on progress towards outcome achievement. - ensure there is consistency between specification stages (such as budgets) and post implementation reporting (e.g. financial statements). 	<ul style="list-style-type: none"> • Pentana Performance Database • Training Records • Financial Regulations • Standing Orders • Minutes of Meetings • Council Website

Local Code of Corporate Governance

What we will do:	How this will be evidenced:
<p>Robust internal control:</p> <ul style="list-style-type: none"> - align the risk management strategy and policies on internal control with achieving objectives. - evaluate and monitor risk management and internal control on a regular basis. - ensure effective counter fraud and anti-corruption arrangements are in place. - ensure additional assurance on the overall adequacy and effectiveness of the framework of governance, risk management and control is provided by the internal auditor. - ensure an audit committee, which is independent and accountable to Full Council: <ul style="list-style-type: none"> • provides a further source of effective assurance regarding arrangements for managing risk and maintaining an effective control environment. • that its recommendations are listened to and acted upon. 	<ul style="list-style-type: none"> • Risk Management Policy • Audit Plan • TEICAFF Protecting the Public Purse 2016 • Annual Governance Statement • Accounts & Audit Terms of Reference • Training Records • Anti-Fraud & Corruption Policy • Internal Audit reports • External Audit letter and reports
<p>Managing data:</p> <ul style="list-style-type: none"> - ensure effective arrangements are in place for the safe collection, storage, use and sharing of all data. - ensure effective arrangements are in place and operating effectively when sharing data with other bodies. - review and audit regularly the quality and accuracy of data used in decision making and performance monitoring. 	<ul style="list-style-type: none"> • Document Retention Policy • Data Protection Policy • Council's website • Data Quality Policy • Pentana Performance Database
<p>Strong public financial management:</p> <ul style="list-style-type: none"> - ensure financial management supports both long term achievement of outcomes and short-term financial and operational performance. - ensure well-developed financial management is integrated at all levels of planning and control, including management of financial risks and controls 	<ul style="list-style-type: none"> • Medium Term Financial Strategy • Treasury Management Strategy & Policy • Statement of Accounts • Budget monitoring reports

Local Code of Corporate Governance

PRINCIPLE G: Implementing good practices in transparency, reporting, and audit to deliver effective accountability

Accountability is about ensuring that those making decisions and delivering services are answerable for them. Effective accountability is concerned not only with reporting on actions completed, but also ensuring that stakeholders are able to understand and respond as the organisation plans and carries out its activities in a transparent manner. Both external and internal audit contribute to effective accountability.

What we will do:	How this will be evidenced:
<p>Implementing good practice in transparency:</p> <ul style="list-style-type: none"> - write and communicate reports for the public and other stakeholders in a fair, balanced and understandable style appropriate to the intended audience and ensuring that they are easy to access and interrogate. - strike a balance between providing the right amount of information to satisfy transparency demands and enhance public scrutiny while not being too onerous to provide and for users to understand. 	<ul style="list-style-type: none"> • Council's website – Open Data & Transparency Section
<p>Implementing good practices in reporting:</p> <ul style="list-style-type: none"> - report at least annually on performance, value for money and stewardship of resources to stakeholders in a timely and understandable way. - ensure members and senior management own the results reported - ensure robust arrangements for assessing the extent to which the principles contained in the CIPFA/SOLACE Delivering Good Governance in Local Government Framework 2016 have been applied and publishing the results on this assessment, including an action plan for improvement and evidence to demonstrate good governance (the annual governance statement) - ensure that the Framework is applied to jointly managed or shared service organisations as appropriate. - ensure the performance information that accompanies the financial statements is prepared on a consistent and timely basis and the statements allow for comparison with other, similar organisations. 	<ul style="list-style-type: none"> • External Audit Reports • Statement of Accounts • Council Constitution • Annual Governance Statement

Local Code of Corporate Governance

What we will do:	How this will be evidenced:
<p>Assurance and effective accountability:</p> <ul style="list-style-type: none"> - ensure that recommendations for corrective action made by external audit are acted upon - ensure an effective internal audit service with direct access to members is in place, providing assurance with regard to governance arrangements and that recommendations are acted upon. - welcome peer challenge, reviews and inspections from regulatory bodies and implementing recommendations. - gain assurance on risks associated with delivering services through third parties and that this is evidenced in the annual governance statement. - ensure that when working in partnership, arrangements for accountability are clear and the need for wider public accountability has been recognised and met. 	<ul style="list-style-type: none"> • External Audit Reports • CIPFA's Role of the Head of Internal Audit • Financial Regulations • Internal Audit Manual • Annual Governance Statement • Community Strategy • External inspections • Internal Audit Plan • Internal Audit reports • Reports to Accounts and Audit Committee

This page is intentionally left blank

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

meeting date: 28 SEPTEMBER 2022
title: CIPFA POSITION STATEMENT: AUDIT COMMITTEES IN LOCAL
AUTHORITIES AND POLICE 2022
submitted by: DIRECTOR OF RESOURCES
principal author: INTERNAL AUDIT MANAGER

1 PURPOSE

- 1.1 The purpose of this report is present a summary of *the Chartered Institute of Public Finance & Accountancy (CIPFA) Position Statement: Audit Committees in Local Authorities and Police 2022* to the Committee for review and to determine whether the proposed actions would enhance the effectiveness of the committee.

2 BACKGROUND

- 2.1 CIPFA's Position Statement: Audit Committees in Local Authorities and Police 2022 ('the Position Statement') sets out their view of the role and functions of an audit committee. It replaces the previous 2018 Position Statement and includes all principal local authorities in the UK.
- 2.2 The statement represents CIPFA's view on the audit committee practice and principles that local government bodies in the UK should adopt and has been prepared in consultation with sector representatives. CIPFA expects that all local government bodies should make their best efforts to adopt the principles, aiming for effective audit committee arrangements. This will enable those bodies to meet their statutory responsibilities for governance and internal control arrangements, financial management, financial reporting and internal audit.
- 2.3 The results of the assessment of the current arrangements in place for the Accounts & Audit Committee against the principles and practices set out in the new Statement are detailed in Annex A.

3 KEY MESSAGES & ISSUES

- 3.1 The 2022 Position Statement sets out the purpose, model, core functions and membership of an audit committee. Key details for each of these areas are set out under each heading below. The Statement defines an audit committee as follows:

Purpose

- Audit committees are a key component of an authority's governance framework. Their purpose is to provide an independent and high-level focus on the adequacy of governance, risk and control arrangements. The committee's role in ensuring that there is sufficient assurance over governance, risk and control gives greater confidence to all those charged with governance that those arrangements are effective.
- In a local authority the full council is the body charged with governance. The audit committee may be delegated some governance responsibilities but will be accountable to full council.

- The committee has oversight of both internal and external audit together with the financial and governance reports, helping to ensure that there are adequate arrangements in place for both internal challenge and public accountability.

Independence and effective model

- 3.2 The audit committee should be established so that it is independent of executive decision making and able to provide objective oversight. It should be an advisory committee that has sufficient importance in the authority so that its recommendations and opinions carry weight and have influence with the leadership team and those charged with governance.
- 3.3 The Statement notes that local authority audit committees should include co-opted independent members in accordance with the appropriate legislation. Where there is no legislative direction to include co-opted independent members, CIPFA recommends that each authority audit committee should include at least two co-opted independent members to provide appropriate technical expertise.
- 3.4 As a non-executive body, the influence of the audit committee depends not only on the effective performance of its role, but also on its engagement with the leadership team and those charged with governance.

Core Functions

- 3.5 The core functions of an audit committee are to provide oversight of a range of core governance and accountability arrangements, responses to the recommendations of assurance providers and helping to ensure robust arrangements are maintained. Specific responsibilities identified include:
 - Maintenance of governance, risk and control arrangements:
 - Support a comprehensive understanding of governance across the organisation and among all those charged with governance, fulfilling the principles of good governance.
 - Consider the effectiveness of the authority's risk management arrangements. It should understand the risk profile of the organisation and seek assurances that active arrangements are in place on risk-related issues, for both the body and its collaborative arrangements.
 - Monitor the effectiveness of the system of internal control, including arrangements for financial management, ensuring value for money, supporting standards and ethics and managing the authority's exposure to the risks of fraud and corruption.
 - Financial and governance reporting:
 - Be satisfied that the authority's accountability statements, including the annual governance statement, properly reflect the risk environment, and any actions required to improve it, and demonstrate how governance supports the achievement of the authority's objectives.
 - Support the maintenance of effective arrangements for financial reporting and review the statutory statements of account and any reports that accompany them
 - Establishing appropriate and effective arrangements for audit and assurance:

- Consider the arrangements in place to secure adequate assurance across the body's full range of operations and collaborations with other entities.
- Consider the opinion, reports and recommendations of external audit and inspection agencies and their implications for governance, risk management or control, and monitor management action in response to the issues raised by external audit.
- Contribute to the operation of efficient and effective external audit arrangements, supporting the independence of auditors and promoting audit quality
- Support effective relationships between all providers of assurance, audits and inspections, and the organisation, encouraging openness to challenge, review and accountability.

Membership

- 3.6 Members need to be of high calibre to provide the level of expertise and understanding required of the committee, and to have an appropriate level of influence within the authority. When selecting elected representatives to be on the committee or when co-opting independent members, aptitude should be considered alongside relevant knowledge, skills and experience.
- 3.7 However, it notes that while expertise in the areas within the remit of the committee is very helpful, the attitude of committee members and willingness to have appropriate training are of equal importance. The overall the overall knowledge and expertise of the existing members should be considered when appointing co-opted independent members.
- 3.8 Good audit committees are characterised by:
- A membership that is trained to fulfil their role so that members are objective, have an inquiring and independent approach, and are knowledgeable.
 - A membership that promotes good governance principles, identifying ways that better governance arrangement can help achieve the organisation's objectives.
 - A strong, independently minded chair, displaying a depth of knowledge, skills, and interest.
 - Willingness to operate in an apolitical manner.
 - Unbiased attitudes – treating auditors, the executive and management fairly.
 - The ability to challenge the executive and senior managers when required.
 - Knowledge, expertise and interest in the work of the committee.

Engagement and outputs

- 3.9 The audit committee should be established and supported to enable it to address the full range of responsibilities within its terms of reference and to generate planned outputs. To discharge its responsibilities effectively, the committee should:
- Meet regularly, at least four times a year, and have a clear policy on those items to be considered in private and those to be considered in public.

- Be able to meet privately and separately with the external auditor and with the head of internal audit.
- Include, as regular attendees, the chief finance officer(s), the chief executive, the head of internal audit and the appointed external auditor; other attendees may include the monitoring officer and the head of resources (where such a post exists). These officers should also be able to access the committee members, or the chair, as required.
- Have the right to call on any other officers or agencies of the authority as required; police audit committees should recognise the independence of the chief constable in relation to operational policing matters.
- Support transparency, reporting regularly on its work to those charged with governance.
- Report annually on how the committee has complied with the position statement, discharged its responsibilities, and include an assessment of its performance. The report should be available to the public.

3.10 The Internal Audit Manager has undertaken an assessment against the above key principles to establish whether they have been met, partially met or not met (Annex A). The following Action Plan has been produced, to which members of this committee are asked to consider and agree any actions that could be taken to enhance effectiveness.

4 PROPOSED ACTION PLAN

Ref #	Principle/ Assessment	Proposed Action
2	<i>Be independent of both the executive and the scrutiny functions</i> The terms of reference should be reviewed on a regular basis to ensure meets expectations and details the roles and responsibilities of the committee.	<u>Action 1</u> Internal Audit Manager to review the Accounts & Audit Committee terms of reference to ensure it reflects CIPFA's position statement and roles and responsibilities. The revised terms of reference will be brought to the November 2022 committee for approval.
6	<i>Include at least two co-opted independent members to provide appropriate technical expertise</i> The committee does not have any co-opted independent members.	<u>Action 2</u> Members are asked to consider whether we seek to appoint independent members in line with CIPFA best practice.
7	<i>Core Functions</i> As per Principle 2 above.	<u>Action 1</u> refers.
8	<i>Training Objectives</i> A training needs analysis will be conducted to highlight training requirements in line with CIPFA's expectations.	<u>Action 3</u> To undertake a self-evaluation and review the outcomes to determine training objectives and programme.

Ref #	Principle/ Assessment	Proposed Action
19	<i>Annual Reporting</i> An annual report has not been provided to Full Council.	<u>Action 4</u> To produce a year-end annual report for Full Council demonstrating compliance with the position statement on how it has discharged its duties and assessed performance.

5 RISK ASSESSMENT

5.1 The approval of this report may have the following implications:

- Resources – there are no resource implications arising as a result of this report.
- Technical, Environmental and Legal – The Council must ensure that it has an appropriate governance framework, including an effective audit committee, in place to comply with legislative requirements and good practice. Failure to do this could have potentially significant consequences for the authority in relation to external assessments, public confidence and risk of legal challenge.

The Accounts & Audit Committee is an important source of assurance for managing risk, maintaining an effective control environment, and reporting on financial and other performance. A review of current best practice will help the Committee to fulfil its responsibilities and ensure the relevant Terms of Reference remains appropriate.

- Political – There are no political implications arising from this report.
- Reputation – There are no reputational implications arising from this report.
- Equality and Diversity – There are no equality or diversity implications arising as a result of this report.

6 RECOMMENDED THAT COMMITTEE

6.1 Consider and agree the recommended actions highlighted in Section 4 above.

INTERNAL AUDIT MANAGER

DIRECTOR OF RESOURCES

AA18-22/RP/AC
28 September 2022

CIPFA Position Statement in Local Authorities and Police
2022 – self assessment

ANNEX A

Ref	CIPFA recommended Audit Committee good practice and principles	Yes	Partial	No	Action required
Independence and effectiveness model – the Audit Committee should:					
1	Be directly accountable to full council.	✓			
2	Be independent of both the executive and the scrutiny functions.		✓		Under Section 9A LGA, the Council does not have a scrutiny committee. Internal Audit Manager to review the terms of reference to ensure independence maintained.
3	Have rights of access to and constructive engagement with other committees/functions, for example scrutiny and service committees, corporate risk management boards and other strategic groups.	✓			
4	Have rights to request reports and seek assurances from relevant officers.	✓			
5	Be of an appropriate size to operate as a cadre of experienced, trained committee members.	✓			
6	Include at least two co-opted independent members to provide appropriate technical expertise.			✓	Members are asked to consider whether we seek to appoint independent members in line with CIPFA best practice.
Core functions:					
7	Do the committee's terms of reference explicitly address all the core areas identified in CIPFA's Position Statement? <ul style="list-style-type: none"> Maintenance of governance, risk and control arrangements. Financial and governance reporting. Establishing appropriate and effective arrangements for audit and assurance. 		✓		The terms of reference will be reviewed and updated accordingly in line with CIPFA's Position Statement.

Ref	CIPFA recommended Audit Committee good practice and principles	Yes	Partial	No	Action required
Membership:					
8	Members are trained to fulfil their role so that they are objective, have an inquiring and independent approach, and are knowledgeable.		✓		To undertake a self-assessment and review the outcomes to determine training objectives and programme.
9	The membership promotes good governance principles, identifying ways that better governance arrangement can help achieve the organisation's objectives.	✓			
10	The chair is strong, independently minded, and displays a depth of knowledge, skills, and interest.	✓			
11	The members demonstrate a willingness to operate in an apolitical manner.	✓			
12	Members have unbiased attitudes – treating auditors, the executive and management fairly.	✓			
13	The members are able to challenge the executive and senior managers when required.	✓			
Engagement and outputs:					
14	Meet regularly, at least four times a year, and have a clear policy on those items to be considered in private and those to be considered in public.	✓			
15	Be able to meet privately and separately with the external auditor and with the head of internal audit	✓			
16	Include, as regular attendees, the chief finance officer(s), the chief executive, the head of internal audit and the appointed external auditor.	✓			
17	Have the right to call on any other officers of the authority as required.	✓			

Ref	CIPFA recommended Audit Committee good practice and principles	Yes	Partial	No	Action required
18	Support transparency, reporting regularly on its work to those charged with governance.	✓			
19	Report annually on how the committee has complied with the position statement, discharged its responsibilities, and include an assessment of its performance. The report should be available to the public.			✓	To produce an annual report for Full Council on the effectiveness of the committee and compliance with the position statement.

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

meeting date: 28 SEPTEMBER 2022
title: CONSULTATION ON THE 2022/23 AUDIT FEE SCALE FOR OPTED-IN BODIES
submitted by: DIRECTOR OF RESOURCES
principal author: LAWSON ODDIE

1 PURPOSE

- 1.1 Public Sector Audit Appointments (PSAA) is consulting on the fee scale for 2022/23 audits. The report asks members to consider the proposed response to the consultation.
- 1.2 Relevance to the Council's ambitions and priorities:
- This report contributes to the council's ambition to be a well-managed council providing efficient services based on identified customer needs.

2 BACKGROUND

- 2.1 The duty to specify scales of fees is one of PSAA's statutory functions as the appointing person. Before setting a scale of fees, they are required to consult with opted-in authorities, relevant representative associations of local authorities and relevant bodies of accountants.
- 2.2 PSAA is currently consulting on the fee scale for 2022/23 audits (Annex 1) – closing date 30 September. This is the final fee scale under PSAA's current audit contracts, which cover audits of the financial statements of opted-in bodies for the five-year period 2018/19 to 2022/23. Audit work under the proposed 2022/23 fee scale will largely be undertaken from autumn 2023 onwards.
- 2.3 This fee scale consultation is separate from the procurement exercise PSAA is currently undertaking for audit contracts that will apply for the next five years, for audits from 2023/24. Audit work under the new contracts will take place from 2024 onwards. Any audit fee implications arising from the results of the procurement will be covered by a PSAA consultation on the 2023/24 fee scale in twelve months' time.
- 2.4 Auditors and auditing have been subject to very high levels of scrutiny in recent times following a number of widely reported financial failures in the private sector. These changes have resulted in significant tensions and pressures in the wider audit market and profession and have led to a series of government-commissioned reviews of audit and audit regulation.
- 2.5 The Department for Levelling Up Housing and Communities (DLUHC) has announced a range of measures to be implemented to address the issues identified in the local audit framework specifically. These include a new system leader role to be discharged by a new regulator, the Audit Reporting and Governance Authority (ARGA) when it is established under future legislation.

2.6 This current consultation on the 2022/23 fee scale is taking place in the context of these pressures and changes. The consultation explains how PSAA proposes to calculate the audit fees which will make up the 2022/23 fee scale, managing the impact of three key elements:

- fee variations approved in relation to 2019/20 and 2020/21 audit work which relate to recurrent audit work that is needed in subsequent audit years;
- changes in local audit requirements; and
- the impact of changes in inflation.

3 THE CONSULTATION AND THE IMPLICATIONS FOR THIS COUNCIL

3.1 PSAA sets the fee scale annually and publishes the scale fee for each individual audited body. If the auditor subsequently considers that additional work is required that is not provided for in the scale fee for an individual body, a fee variation proposal can be submitted to PSAA. This is set out in the statutory framework for audit fees and variations, in the Local Audit (Appointing Person) Regulations 2015. Regulation 17(2) provides for the auditor to propose to PSAA (as the Appointing Person) that fees should be varied where the work involved in a particular audit was substantially more or less than envisaged by the appropriate scale.

3.2 The reasons for submitting fee variation proposals vary. Examples of reasons given include:

- Increased regulator challenge on audit quality resulting in the need for additional work to provide greater assurance on areas such as property, plant and equipment valuations and pension valuations;
- technical accounting issues;
- increased challenge on audit quality;
- group accounts;
- the auditor has received an objection from an elector; or
- the working papers to support the annual accounts were of a poorer quality than in previous years.

3.3 The aim of PSAA is to keep our audit fee as up-to-date as possible based on the most recent information that they have available. They propose setting our 2022/23 scale fee by updating your 2021/22 scale fee with the most recent recurring fee variations that they have approved in relation to our audit (See Annex 2).

Fee Element	£
2021/22 Scale Fee	33,956
Recurring Approved Fee Variations for Consolidation into 2022/23 Scale Fees:	
Pensions Valuation	500
Property Plant and Equipment Valuation	688
Increased Financial Reporting Council (FRC) Challenge	1,625
Subtotal	36,769

Fee Element	£
Adjustment for inflation 5.2% (on scale fee and recurrent fees)	1,912
Total scale fee for 2022/23	38,681
PSAA funding of inflation (on scale fee and recurrent fees)	-1,912
Scale Fee to be paid by this Council	36,769

- 3.4 The fee scale consultation also refers to the contractual inflationary increase in auditor remuneration, which PSAA proposes to fund from monies that would otherwise be part of a future distribution to opted-in bodies.
- 3.5 The PSAA contracts with audit suppliers provide for an increase for inflation for audit years 2021/22 and 2022/23 based on the annual March CPI rate, minus 1%. No increase was required for the 2021/22 fee scale given the relatively stable position on inflation in 2021. However, for 2022/23 there is the need to increase the firms' remuneration by 5.2% based on the March 2022 CPI of 6.2%.
- 3.6 The total cost of the increase in remuneration for 2022/23 audits is £1.79 million. The options for funding this increase are either to use the surplus funds not required for PSAA's operations, which would otherwise be distributed to opted-in bodies, or to add the required increase to the 2022/23 fee scale.
- 3.7 PSAA are proposing to fund the increase from their surplus, which would have otherwise be distributed. In effect this is still a charge to us, as it is reducing the value of any PSAA surplus funds distribution. This is shown in the table above for completeness.
- 3.8 PSAA also highlight that they will not be consolidating additional fees needed for work on the Value for Money (VFM) commentary and ISA 540 (*Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*) into the 2022/23 scale fee as they do not currently have sufficient information to enable them to do so. The additional work will continue to be subject to the fee variation process and consolidated into a future fee scale when the evidence base is sufficiently robust.
- 3.9 For this council, further Fee Variations for 2021/22 that are not proposed to be brought into the 2022/23 Scale Fee at this stage (*all costs relate to estimated 2021/22 charges and may be subject to change*) relate to:
- Value For Money: £9,000
 - ISA540 (*Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*): £3,000
 - Journals work: £2,500
 - Grants (*Does not include Housing Benefit Assurance Process (HBAP) work*): £2,000

4 CONCLUSION

- 4.1 PSAA are currently consulting on the 2022/23 audit Scale Fee, with a closing date of 30 September 2022. This will bring in some of the fee variations that are currently paid on top of the Scale Fee.

4.2 Under the proposals, the net Scale Fee for this council (*after PSAA fund the inflation factor from surpluses that councils would have otherwise received*) would be £36,769 (£33,956 2021/22)

4.3 It must be borne in mind that this is not the total of our audit fee, as other fee variations are charged which are not proposed to be brought under the Scale Fee at this stage.

4.4 In 2021/22 these amount to a further £16,500 (*may be subject to change as the audit has not yet been completed*). HBAP grant work is also a further additional fee (£22,492 2021/22 and £23,617 proposed)

5 RISK ASSESSEMENT

5.1 The approval of this report may have the following implications

- Resources – As there is no detail around the actual variation fees that would be charged on top of the Scale Fee for 2022/23, it is not possible to give an indication of potential budget implications. However, should these fees remain around the level indicated for 2021/22 they should be able to be accommodated within the base budget.
- Technical, Environmental and Legal – The PSAA review touches on the considerations under the Redmond Review.
- Political – Not Applicable
- Reputation – Transparency around audit arrangements help protect the council's reputation and gives assurances to key stakeholders.
- Equality and Diversity – None directly through the agreement to the PSAA proposed fee

6 RECOMMENDED THAT COMMITTEE

6.1 Consider and agree to the proposals made by PSAA in respect of the Scale Fees for 2022/23.

HEAD OF FINANCIAL SERVICES

DIRECTOR OF RESOURCES

AA21-22/LO/AC

15 September 2022

BACKGROUND WORKING PAPERS:

For further information please ask for Lawson Oddie, extension 4541

Consultation on the 2022/23 audit fee scale

Opted-in local government, fire and police bodies

August 2022

Public Sector Audit Appointments Limited (PSAA) is an independent company limited by guarantee incorporated by the Local Government Association in August 2014.

In July 2016, the Secretary of State specified PSAA as an appointing person for principal local government authorities for audits from 2018/19, under the provisions of the Local Audit and Accountability Act 2014 and the Local Audit (Appointing Person) Regulations 2015.

From 2018/19 PSAA is responsible for appointing an auditor and setting scales of fees for relevant principal authorities that have chosen to opt into its national scheme.

Contents

Summary	2
Responding to the consultation	3
Fee scale 2022/23.....	4
Introduction	4
Factors to be considered in setting the 2022/23 fee scale	5
Summary of Proposal	8
Statement of responsibilities	9
Value added tax	9
Next steps	10

Summary

- 1 This consultation invites audited bodies and stakeholders to submit views on PSAA's proposals for setting the fee scale for the audit of opted-in bodies' 2022/23 financial statements and value for money arrangements. Audit work under this fee scale will largely be undertaken from autumn 2023 onwards.
- 2 Consultees will be aware that auditors and auditing have been subject to very high levels of scrutiny in recent times following a number of widely reported financial failures in the private sector. These events led the government to commission a series of reviews focusing on audit regulation, the audit market, audit quality and effectiveness, and more specifically the framework for local audit and financial reporting.
- 3 The Department for Levelling Up Housing and Communities (DLUHC) has announced [a range of measures](#) to address the challenges identified in relation to the local audit framework. These measures include arrangements for a 'system leader', a role which is to be located within a new regulator, the Audit Reporting and Governance Authority (ARGA) when it is established. In preparation, the Financial Reporting Council (FRC) will implement shadow arrangements and has appointed the first Director of Local Audit, who will take up a post leading a dedicated local audit unit in September 2022.
- 4 This consultation is therefore taking place in the context of the significant tensions and pressures in the wider audit market and profession, and of evolving arrangements in the local audit system. The issues highlighted in 2020 in the [Redmond review](#) of local audit and financial reporting continue to have a significant impact on audit delivery and have led to increasing delays for auditors in completing some audits.
- 5 The consultation is carried out in accordance with the relevant provisions of the Appointing Person Regulations, which include the requirement to consult on and set the audit fee scale before 1 December of the relevant financial year.
- 6 The consultation explains how PSAA proposes to calculate the audit fees which will make up the 2022/23 fee scale. The proposal involves managing the impact of three key elements:
 - fee variations approved in relation to 2019/20 and 2020/21 audit work which relate to recurrent audit work in subsequent audit years;
 - changes in local audit requirements; and
 - the impact of changes in inflation.
- 7 The 2022/23 audit year is the last in the current five-year appointing period, which covers the audits of the accounts of relevant authorities for 2018/19 to 2022/23.
- 8 New audit contracts will apply for the five audit years from 2023/24, following a PSAA audit procurement exercise during 2022. Any fee implications arising from the results of the procurement will be considered in our consultation on the 2023/24 fee scale in twelve months' time.

Responding to the consultation

We welcome comments on the proposals contained in this document. Please send feedback to:

<https://www.surveymonkey.co.uk/r/LXTQ2MH>

The consultation will close on **Friday 30 September 2022**.

Fee scale 2022/23

Introduction

- 9 As the appointing person for local authorities, fire and police bodies, PSAA is required to undertake consultations before setting audit fee scales. This year's consultation, on the fee scale for the audit of 2022/23 financial statements and value for money arrangements of bodies that have opted into PSAA's national auditor appointment scheme, takes place in the context of continuing significant turbulence and uncertainty in the local audit market.
- 10 The 2020 [Redmond review](#) into local audit and the transparency of local authority financial reporting highlighted a lack of coherence in the current local audit framework, contributing to wider issues including audit delays and market instability. Delays are becoming more prevalent under the pressure of increasing expectations from professional regulators, shortages of experienced auditors, greater complexity of transactions and structures, and the challenges posed by the Covid pandemic.
- 11 The government has announced [a range of measures](#) to strengthen the local audit framework. A 'system leader' role will be discharged by a new regulator, ARGA, when it is established under new legislation. In preparation, the FRC will implement shadow arrangements and has appointed the first Director of Local Audit, who will take up the post of leading a dedicated local audit unit in autumn 2022. In the meantime, DLUHC is acting as interim system leader.
- 12 PSAA is required to set a fee scale under the statutory requirements and timescales set out in the Local Audit Regulations. Changes to the regulations in February 2022 included moving the fee setting deadline from March to November, to provide more scope to set fees based on information from completed audits. The statutory requirement is now that a fee scale must be set before 1 December of the relevant financial year and cannot subsequently be amended.
- 13 This later deadline applies for the first time to the 2022/23 fee scale, the last in the current five-year appointing period. Even with the added time, PSAA must consult on the 2022/23 fee scale before work on the 2021/22 audits is undertaken. The impact of delayed audit completions means that around 40% of 2020/21 audits also remain outstanding. As with the fee scales for the four audit years 2018/19 to 2021/22, this means PSAA is setting the fee scale without the benefit of information on the outcome of audits for the preceding year or years, and without a clear picture of the additional audit work needed.
- 14 Audit requirements have increased in recent years as a result of increased regulatory expectations and changes to the audit work required under the Code of Audit Practice and updated auditing and financial reporting standards. As audit work must be undertaken after the financial year and fee scales have, prior to this year, had to be set before it starts, it has been necessary for PSAA to evaluate the impact on fees of any additional audit requirements through the fee variations process.
- 15 We aim to consolidate fee variations for ongoing additional audit requirements into a future fee scale at the earliest opportunity, removing the need for continued discussion each year between opted-in bodies and auditors about the additional fees for ongoing work. We received generally positive feedback on this approach from opted-in bodies and

Consultation on 2022/23 audit fee scale

stakeholders in consultations in November 2020 on fee variation arrangements and in 2021 on the 2021/22 fee scale. We propose to continue this approach for the 2022/23 fee scale.

Factors to be considered in setting the 2022/23 fee scale

- 16 PSAA set the most recent fee scale, for the 2021/22 audits, in March 2021. At that time, we were able to consolidate into the fee scale approved 2018/19 fee variations for ongoing audit requirements where these had been submitted for approval.
- 17 The 2021/22 fee scale is the baseline from which we will set the 2022/23 fee scale. We will update the fee scale to take account of more recent approved fee variations for ongoing work. In setting the fee scale, we also need to consider whether we can update it to reflect changes in audit requirements that apply from 2022/23.

Approved fee variations which relate to audit work of an ongoing nature

- 18 Auditors may find it necessary to carry out additional audit work in order to give their audit opinion. This may be because requirements have changed, or it may be due to local circumstances. The regulations allow for additional fees to be payable where significant additional work is required. Additional fees are evaluated under our [fee variations process](#) and are subject to PSAA approval.
- 19 Where the additional audit work is of an ongoing nature, it makes sense to update the relevant scale fee at the earliest opportunity, to reflect the need for that work in future years. In this way we aim to ensure that all fees are systematically updated on a regular basis for any changing audit work requirements. In contrast, non-recurrent additional work continues to be dealt with through one-off fee variations each year.
- 20 In the 2022/23 fee scale we are proposing to consolidate the additional fees needed for ongoing audit work identified in 2019/20 and 2020/21 fee variations, excluding the fees needed for work on the VFM commentary and ISA540. We can do this where audits are complete and fee variations have been submitted to and approved by PSAA.
- 21 Ongoing additional audit work generally falls into the following categories:
 - group accounts;
 - pension valuation;
 - PPE valuation;
 - increased regulatory challenge;
 - public interest entity requirements; and
 - PFI.
- 22 While we do not have complete information yet for all 2019/20 or 2020/21 audits, we do have many audits with agreed and approved fee variations. Where we do not have approved fee variation information for individual bodies, we will need to consolidate those requirements into a future fee scale consultation. When we update the fee scale for recurring 2019/20 and 2020/21 fee variations, we will strip out any elements that have already been baked into scale fees in prior years to ensure we avoid any double counting.

Consultation on 2022/23 audit fee scale

23 As part of this consultation we will write to all individual opted-in bodies to explain the proposed change to their scale fee for 2022/23. This will ensure that individual bodies have an opportunity to ask questions and, if appropriate, to challenge our proposals. For the avoidance of doubt, we will write to:

- bodies which have been subject to approved fee variations for 2019/20 or 2020/21 that we have assessed as being of an ongoing nature (with the proposed impact on their 2022/23 scale fee);
- bodies for which approved fee variations have not related to work of an ongoing nature, or which have not been subject to approved fee variations (whose 2022/23 scale fees will be unaffected); and
- bodies for which claims for 2019/20 and 2020/21 fee variations remain outstanding (whose scale fees may need to be updated for a future fee scale).

Changes in local audit requirements

24 Where local audit requirements change or are updated, PSAA must consider the potential impact of each development on the fee scale. We need to consider whether additional fees are necessary, whether we can estimate the additional fees based on reliable evidence, and whether it is possible to incorporate the fees into the proposed fee scale in time for the consultation. We take a cautious approach to consolidating fees into the fee scale, to avoid the risk of over-estimating the additional requirement in the longer term.

25 Over the last two years we have commissioned external independent technical research to provide information, analysis and recommendations to support our work on updating the fee scale. This work has also provided helpful input to our fee variations reviews.

26 As we are required to consult on and publish the fee scale before audit work for the relevant year is undertaken, the research has focused on published changes in requirements, such as those set out in the Code of Audit Practice 2020 (the Code) and new or updated auditing and financial reporting standards. It has not included consideration of changes in regulatory expectations, as these typically arise from regulatory reviews carried out after audit work has been completed.

27 From an extensive list of changes and updates to the Code and relevant standards, the research has identified three that will have a significant enough impact to need additional fees for 2022/23 audits:

- the requirement for a VFM commentary, rather than a conclusion, in the Code of Audit Practice 2020, effective from 2020/21 audits;
- additional requirements in ISA (UK) 540 (revised) Auditing Accounting Estimates, effective from 2020/21 audits; and
- additional work needed under ISA (UK) 315 (revised) Identifying and assessing the risks of material misstatements, effective from 2022/23 audits.

28 The research has concluded that the impact on auditors' work of these changes is likely to be variable during the implementation years, depending on the local circumstances and arrangements of individual opted-in bodies. This makes it difficult to estimate a standardised fee with any certainty for all or most bodies.

Consultation on 2022/23 audit fee scale

- 29 Given the complexity of the new requirements relating to the VFM commentary and ISA 540, we do not propose to consolidate additional fees for this work into the 2022/23 fee scale at this stage. Instead, we plan to use the fee variations process for a second year, for the 2021/22 audits, to evaluate the longer-term additional fees required for consolidation into a future fee scale.
- 30 For the 2020/21 audits, the first year of implementation, we published indicative minimum additional fee ranges to support discussions between opted-in bodies and auditors of the fees needed for this work. The fee ranges are set out below and will apply again for 2021/22 audits. We will consider consolidation into the 2023/24 fee scale when we consult in twelve months' time.

Minimum additional fees: new VFM commentary work for 2020/21 and 2021/22 audits¹

District council	County council	London borough council	Met council	Unitary	Police (PCC + CC combined)	Fire	Other LG bodies
£6,000-£11,000	£10,000-£19,000	£10,000-£19,000	£10,000-£19,000	£10,000-£19,000	£6,000-£11,000	£5,000-£9,000	Variable based on individual characteristics

¹ To be considered on an individual basis, but the general ranges may provide a useful reference

Minimum additional fees: ISA 540 work for 2020/21 and 2021/22 audits

Overall minimum additional fees								
The additional fees below depend on body type and individual circumstances and the fee variation required may be higher than the suggested minimum								
Approximate minimum additional fee by body type:								
District council	County council	London borough council	Met council	Unitary	Police (PCC + CC combined)	Fire	Pension fund	Other LG bodies
£2,500	£3,800	£4,400	£4,400	£4,400	£2,500	£1,900	£600-£1,900	Too variable to estimate

- 31 The revised ISA 315 applies from 2022/23 audits. Our research could not identify a consistent basis for estimating the additional fees needed at this stage. We therefore propose using the fee variations process to establish a realistic fee level for consolidation into a future fee scale.
- 32 There are some other developments which may affect the audit fees needed for 2022/23 audits, but specific requirements have not been confirmed or published yet:
- CIPFA/LASAAC has consulted on a possible approach to the basis for accounting for infrastructure assets, but further information on any changes to requirements was not available at the time of this consultation;
 - the Treasury is undertaking a review of non-investment asset valuation, which is due to report in autumn 2022; and
 - there may be a change in the threshold for Whole of Government Accounts, reducing the audit work required for some local government bodies.

Consultation on 2022/23 audit fee scale

- 33 PSAA is unable to amend a fee scale once it is set. Therefore, where any changes to local audit requirements are clarified for 2022/23 audits following this consultation, they will need to be considered initially via the local fee variations process.

Inflation

- 34 Our contracts with audit suppliers provide for an increase for inflation for audit years 2021/22 and 2022/23 based on the annual March CPI rate, minus 1%.
- 35 No increase was required for the 2021/22 fee scale given the relatively stable position on inflation in 2021. However, for 2022/23 we need to increase the firms' remuneration by 5.2% based on the March 2022 CPI of 6.2%.
- 36 The total cost of the increase in remuneration for 2022/23 audits is £1.79 million. The options for funding this increase are either to use the surplus funds not required for PSAA's operations, which would otherwise be distributed to opted-in bodies, or to add the required increase to the 2022/23 fee scale.
- 37 We propose to fund the increase from our surplus, rather than making a separate distribution.

Summary of Proposal

- 38 In summary, we propose that the fee scale for 2022/23 will be built up as follows:

2022/23 fee scale: proposed elements

A. The fee scale set for 2021/22

Plus:

B. Fee variations for recurrent requirements in 2019/20 audits

C. Fee variations for recurrent requirements in 2020/21 audits

D. Adjustment for inflation

Additional fees needed for work relating to additional changes in auditing and financial reporting requirements will be determined using the fee variations process and considered for consolidation into a future fee scale

- 39 We will write to opted-in bodies during the consultation period to set out their expected scale fee based on these elements. We have set out below an example of how the scale fee will be made up:

Consultation on 2022/23 audit fee scale

Example	Body Z
A. The fee scale set for 2021/22 Plus:	£30,000
B. Fee variations for recurrent requirements in 2019/20 audits (where received and approved and where different from the 2018/19 fee variations already consolidated into the 2021/22 fee scale)	£2,000
C. Fee variations for recurrent requirements in 2020/21 audits (where received and approved and where different from those consolidated for previous years)	£3,000
Subtotal	£35,000
D. Adjustment for inflation 5.2% (on scale fee and recurrent fees)	£1,820
Total scale fee for 2022/23	£36,820
PSAA funding of inflation (on scale fee and recurrent fees)	-£1,820
Fee to be paid by the opted-in body to the firm	£35,000

Statement of responsibilities

- 40 The [statement of responsibilities of auditors and audited bodies](#) sets out the expectations on which scale fees are based. The statement effectively represents the terms of engagement between appointed auditors and audited bodies and summarises their respective responsibilities. Scale fees are based on the expectation that audited bodies can provide the auditor with complete and materially accurate financial statements and supporting working papers within agreed timeframes. Local fee variations may be required where a body is unable to fulfil these requirements.
- 41 The statement of responsibilities also applies to auditors. Additional audit costs that arise due to auditors not meeting expectations in relation to their responsibilities are ineligible for a fee variation.

Value added tax

- 42 Individual audit fees under the 2022/23 fee scale do not include value added tax (VAT), which will be charged at the prevailing rate, currently 20 per cent, on all work done.

Next steps

- 43 We welcome comments from audited bodies and stakeholders on the proposals outlined in this document. The closing date for comments is Friday 30 September 2022.
- 44 Please send any questions on this consultation to: workandfeesconsultation@psaa.co.uk.
- 45 We will take account of responses to this consultation in setting the 2022/23 fee scale, for publication by 30 November 2022.
- 46 If you have comments about the way this consultation has been conducted, these should be sent by email to generalenquiries@psaa.co.uk.

2022/23 scale fee for Ribble Valley Borough Council

PSAA is [consulting on the fee scale for 2022/23 audits](#). Your proposed scale fee based on the consultation proposals is set out below.

Our aim is to keep your audit fee as up-to-date as possible based on the most recent information we have available. We propose setting your 2022/23 scale fee by updating your 2021/22 scale fee with the most recent recurring fee variations we have approved in relation to your audit. Table 1 below provides a summary of your proposed 2022/23 scale fee.

Table 1: 2022/23 scale fee summary*

2021/22 scale fee	£33,956
Recurring approved fee variations for consolidation into 2022/23 scale fees (see Table 2)	£2,813
2022/23 scale fee	£36,769

* Please note: the fee scale consultation also refers to the contractual inflationary increase in auditor remuneration, which PSAA proposes to fund from monies that would otherwise be part of a future distribution to opted-in bodies. Further details are set out in the consultation.

In line with the Appointing Person Regulations, we cannot change your 2022/23 scale fee after 30 November 2022. Any further recurring fee variations or changes approved after 30 November will therefore be considered in a future fee scale.

We will not be consolidating additional fees needed for work on the VFM commentary and ISA 540 into the 2022/23 scale fee as we do not currently have sufficient information to enable us to do so. The additional work will continue to be subject to the fee variation process and consolidated into a future fee scale when the evidence base is sufficiently robust.

Table 2 below sets out the fee variations approved to date for your audit over the three audit years 2018-21 in respect of additional work performed on groups, pension valuations, PIE, PPE valuations, increased FRC challenge and PFI (left-hand side of Table 2). These figures are taken from the Fee Variation Statements we have sent you for approved fee variations.

The fee variations shown for each of the three audit years are not necessarily final figures. In some cases, for example, where audits have yet to be completed, further fee variation claims are expected. The recurring elements of any further fee variations approved will be addressed in future fee scale consultations.

The proposed aggregate value of recurring fee variations to date for consolidation into your 2022/23 scale fees is shown in column A of Table 2 and is based on the most recent approved fee variations for your audit.

Sometimes fee variations can be a combination of recurring and non-recurring work. We have reviewed each fee variation to identify the recurring element/s within the categories and so the aggregate recurring element may differ from the lefthand side of the table (the figures included in your Fee Variation Statement).

Some of these recurring fee variations may have already been consolidated within your scale audit fee. Where this is the case relevant figures are shown in column B. The balance of any recurring fee variations (A minus B) which have not yet been consolidated are shown in column C. These are the additional fees which we propose to incorporate within your 2022/23 scale fee.

Table 2: Summary of recurring approved fee variations for consolidation into 2022/23 scale fees

Fee variation area of work	Approved fee variations			Proposed aggregate recurring value for consolidation into 2022/23 scale fees	2018/19 already consolidated into 2021/22 scale fees	Recurring approved fee variations for consolidation into 2022/23 scale fees
	2018/19	2019/20	2020/21			
Group	-	-	-	-	-	-
Pension valuation	£1,500	£1,600	£2,000	£2,000	£1,500	£500
PIE	-	-	-	-	-	-
PPE valuation	£1,500	£1,750	£2,188	£2,188	£1,500	£688
Increased FRC Challenge	-	£1,300	£1,625	£1,625	-	£1,625
PFI	-	-	-	-	-	-
Total approved fee variations for recurring categories	£3,000	£4,650	£5,813	£5,813	£3,000	£2,813

**RIBBLE VALLEY BOROUGH COUNCIL
REPORT TO ACCOUNTS & AUDIT COMMITTEE**

meeting date: 28 SEPTEMBER 2022
 title: DRAFT RISK MANAGEMENT POLICY
 submitted by: DIRECTOR OF RESOURCES
 principal author: INTERNAL AUDIT MANAGER

1. PURPOSE

1.1. To ask Members to consider and approve the updated and revised Risk Management Policy.

1.2. Relevance to the Council’s ambitions and priorities:

- Community Objectives – none identified.
- Corporate Priorities – a well-managed Council.
- Other Considerations – none identified.

2. BACKGROUND

2.1. A comprehensive review of the Policy has been undertaken and Members are asked to consider the revised Policy attached at Annex A for approval.

3. INFORMATION

3.1. The Council is committed to leading the organisation forward to deliver a quality service and achieve excellent results, thereby ensuring that it delivers the best service possible, in the right place, and makes the very best possible use of public funds. It will use the risk management processes outlined in this Policy as a means to help achieve this.

3.2. Risk management is central to the effective running of any organisation and is part of the organisational culture. At its simplest, risk management is good management practice and should not be seen as an end, but as part of an overall management approach. The Council will ensure that decisions made on behalf of the organisation are taken with consideration to the effective management of risk.

3.3. This Policy identifies those individuals with responsibilities in the management of risk covering strategic and organisational risk. It sets out the key risk management structures and processes and defines the objectives of and responsibility for each of these within the Council.

3.4. This is a full review of the previous policy document and therefore tracked changes have not been able to be used.

4. RISK ASSESSMENT

4.1 The approval of this Policy may have the following implications:

- Resources – None.
- Technical, Environmental and Legal – None.
- Political – None.
- Reputation – The Council must ensure that it has a sound system of internal control in place. Transparency in our procedures can only enhance the Council’s reputation.
- Equality & Diversity – None.

5. RECOMMENDED THAT COMMITTEE

5.1 Note the amendments and approve the Risk Management Policy.

INTERNAL AUDIT MANAGER

DIRECTOR OF RESOURCES

AA19-22/RP/AC
16 September 2022

BACKGROUND PAPERS

None

Risk Management Policy

September 2022



**Ribble Valley
Borough Council**

www.ribblevalley.gov.uk

Document Control	
Version:	V1.3
Replaces/ dated:	Previous Risk Management Policy dated 2017
Author(s) Job Title:	Internal Audit Manager
Ratifying Committee:	Accounts & Audit Committee
Director/ Sponsor:	Director of Resources
Primary Readers:	CMT
Additional Readers:	All Staff
Date ratified by CMT:	14 September 2022
Date ratified by Accounts & Audit Committee:	28 August 2022
Date for review:	September 2023

Contents	Page
Introduction	4
Risk Management Process	5
Accountabilities, Responsibilities and Duties	6
Risk Appetite	8
Risk Assessment and Management Procedures	9
Communicate and Consultation	11
Annex A: Risk Matrix	12

1. Introduction

The Council is committed to leading the organisation forward to deliver a quality service and achieve excellent results, thereby ensuring that the organisation delivers the best service possible, in the right place, and makes the very best possible use of public funds. It will use the risk management processes outlined in this Policy as a means to help achieve this.

Risk management is the process of identifying risks, evaluating their likelihood and potential impact and determining the most effective methods of controlling them or responding to them.

The Council is committed to using a systematic/ holistic approach to risk management and recognises that the proactive and continuous management of risk is essential to the efficient and effective delivery of its service aims and objectives and that all actions contain inherent risks.

Risk management is central to the effective running of any organisation and is part of the organisational culture. At its simplest, risk management is good management practice and should not be seen as an end in itself, but as part of an overall management approach. The Council will ensure that decisions made on behalf of the organisation are taken with consideration to the effective management of risk.

This Policy identifies those individuals with responsibilities in the management of risk covering strategic and organisational risk. It sets out the key risk management structures and processes and defines the objectives of and responsibility for each of these within the Council.

Risk Management Objectives

The Council's risk management objectives have been set to take account of the internal and external strategic influences and the requirements detailed in this document.

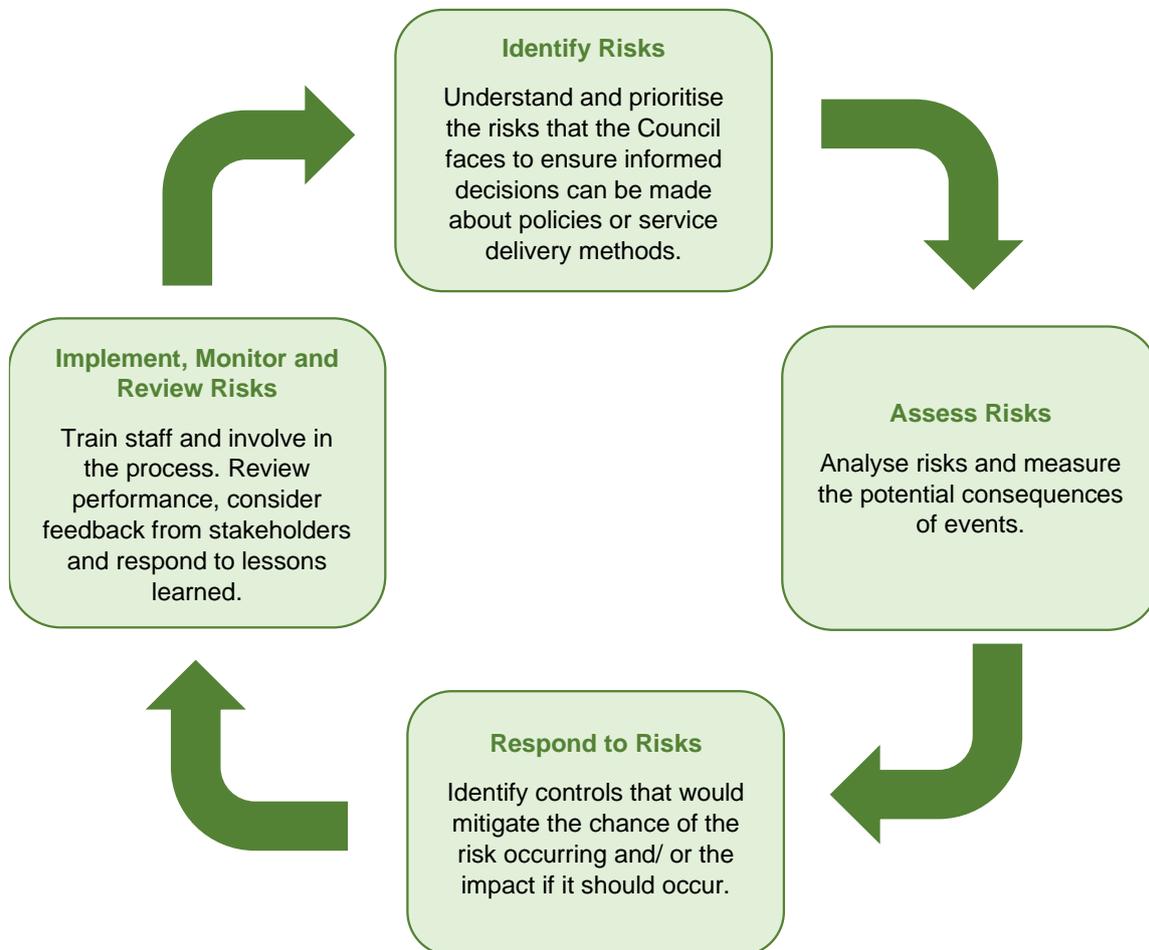
- Embed risk management into the culture of the Council so that it is an integral part of the Council's management systems and processes.
- Maintain systems and processes to manage risk and contribute to good corporate governance through accurate, relevant and timely reporting on risk management.
- Maintaining clear roles and responsibilities regarding risk management, including business continuity management.
- Develop and disseminate best practice in the management of risk.
- Equip Members and officers with adequate skills and expertise to manage risk effectively as appropriate to their role.

Risk management is an active process that requires the co-operation of all staff. Thus, the management of risk is not the responsibility of any one person or group, but the responsibility of every individual in the Council.

This Policy is intended for use by all directly employed, agency staff and contractors engaged on Council business in respect of any aspect of that work.

2. Risk Management Process

The Council's overarching risk management process ensures that risks are identified, assessed, controlled, and when necessary, escalated on a continuous cycle. These main stages are carried out through:



This Policy contains a structure of delegated responsibility for implementing risk management systems within the organisation. These are illustrated and explained in detail in Section 3 and involves all levels of the organisation.

Risk Management Levels

Individual members of the Corporate Management Team (CMT) are responsible for the Council's strategic risks, and these are reviewed and updated regularly. Service/ operational level risks are owned by Directors and/ or Heads of Service and are discussed and reviewed at Heads of Service meetings. Most of our risks are service or operational level risks that are owned by an appropriate person, usually a manager, with specialist knowledge of the area. These are managed on a day-to-day basis as part of business-as-usual activity.



3. Accountabilities, Responsibilities and Duties

All members of staff have an individual responsibility for the management of risk. All levels of management must understand and implement the Risk Management Policy and supporting processes and provide support and guidance to their staff in undertaking their duties.

An outline of the specific risk management responsibilities relating to the structure is described in the following sub-sections.

Council and Committee Duties and Responsibilities

The Council/ service committees

- Ensure consideration of risk in agreeing the Council's direction of travel.
- Responsibility for setting corporate policy.
- Agree and oversee the delivery of the Risk Management Policy.
- Review the Strategic Risk register regularly.
- Challenge decisions made by officers where risks have not been considered properly.
- Request risk report information for areas in line with their service committee responsibilities and provide assurance to Accounts & Audit Committee.

Accounts & Audit Committee

- To consider the council's framework of assurance and ensure that it adequately addresses the risks and priorities of the council.
- To monitor progress in addressing risk-related issues reported to the committee on a **bi-annual** basis.
- Approve and monitor a risk-based audit programme.

Individual Responsibilities

Corporate Management Team

- Set the tone from the top and promote the benefits of risk management.
- Discuss and review the Strategic Risk Register and associated reports on a **monthly** basis.
- Work with Heads of Service to identify new or emerging strategic risks.
- Ensure full compliance with all corporate governance requirements, including the production of the Annual Governance Statement, and communicate it to the elected Members.

Directors

- Ensure there are effective risk management arrangements in their services in line with the Risk Management Policy.
- Take ownership for risks within their departments and ensure risk registers, risk assessments including project and partnership registers, are regularly discussed, reviewed, updated and escalated as appropriate.
- Identify cross cutting risks which impact on the achievement of service objectives.
- Ensure Service risk registers and mitigating actions are reported to CMT **monthly**.
- Risk implications of all new business change proposals are satisfactorily taken into account.

Heads of Service

- Ensure that risk management within their area of responsibility is implemented in line with this Policy.
- Take ownership for the risks within their department, ensuring the risk register is discussed **monthly** (including as part of the performance appraisal process), reviewed and updated and identifying analysing, prioritising and managing risk within the service as part of the business planning process.
- Ensure that all strategic risks are aligned to corporate objectives.
- Escalate operational risks up to the strategic level when required.
- Ensure mitigating actions are carried out and controls are in place.

All staff

- Manage risk as part of their role and report risks to their managers.
- Develop understanding and become familiar with the Risk Management Policy.
- Maintain awareness of risks, their impact, including costs, and feed these through the adopted risk management process.

4. Risk Appetite

The Council recognises risk is inherent in the provision of its services, and therefore a defined approach is necessary to identify risk context, ensuring that the organisation understands and is aware of the risks it is prepared to accept in the pursuit of the delivery of the corporate aims and objectives.

The Council's Risk Appetite Statement makes clear the expectations in relation to the category of risks they expect the organisation's management to identify, and the level of such risk that is acceptable. The statement is based on the premise that the lower the risk appetite, the less the Council is willing to accept in terms of risk and consequently the higher levels of controls that must be put in place to manage the risk. The higher the appetite for risk, the more the Council is willing to accept through established systems of internal control and will not necessarily seek to strengthen those controls. Risk Appetite will therefore be set at one of the following levels:

Risk Appetite	What it means
No Appetite	We are not prepared to accept uncertainty of outcomes for this type of risk.
Low Appetite	We accept that a low level of uncertainty exists but expect that risks are managed to a level that may not substantially impede the ability to achieve objectives.
Moderate Appetite	We accept a moderate level of uncertainty but expect that risks are managed to a level that may only delay or disrupt achievement of objectives but will not stop their progress.
High Appetite	We accept a high level of uncertainty and expect that risks may only be managed to a level that may significantly impede the ability to achieve objectives.

5. Risk Assessment and Management Processes

Risk Management System

Risk owners are required to enter perceived and real risks onto the Risk Management System (Pentana). This process ensures the Council maintains Service (local) and Corporate Risk Registers, underpinning the organisation's overarching Strategic Risk Register. The compilation and maintenance of an up to date and comprehensive Corporate and Strategic Risk Register is one of the key elements of the Council's Risk Management Policy.

The risk management system is an electronic database that holds the main record of all identified risks to Council's objectives and operations. These risks are recorded within individual risk registers allocated to Services and risk owners.

Each of these Risk Registers are dynamic documents readily accessible to all staff with risk management roles. Risk registers contain individual risks which are given a target and current risk rating (which is dynamically updated) along with relevant controls, assurances, gaps and mitigating actions. Actions are detailed to reduce the risk to the lowest acceptable level, or to a level determined as acceptable by CMT, and these are included within their relevant risk register. All identified risks will be monitored and reviewed on a continuous basis by CMT and/or Committees.

Regular review and updating of all Risk Registers is a routine part of the risk management process. This ensures that new risks that arise will be identified and risks that are no longer relevant can be closed. The aims of the Corporate and Strategic Risk Registers are:

- **Strategic Risk Register:** Risks that need to be taken into account in judgements about the medium to long term goals and objectives of the Council.
- **Corporate Risk Register:** Risks encountered in the everyday work of managers and staff.

Risk Analysis/ Assessment

For every decision or activity there is an associated risk that delivery will not take place. We determine an inherent and a residual risk score by assessing the likelihood and potential impact of each strategic and Service risk using the standard scoring matrix set out in annex A. The results will be recorded in the relevant risk register.

There are two components to the risk assessment; likelihood and impact. Example descriptors for assessing the likelihood and impact scores for risks and opportunities are set out in the Matrix. The complete risk management assessment calculates inherent (or gross) risk and residual risk. These are calculated as follows:

Likelihood score x Impact score = Total risk score

For each scenario the two risk scores will be calculated and documented:

Inherent Risk

An assessment of the likelihood and impact of the risk scenario occurring if no controls were in place regarding the activity. This score serves as a baseline measurement of the severity of the specific risk facing the Council due to a particular threat.

Residual Risk

To offset the inherent risk identified the Council applies controls to reduce it. Residual risk is the perception of the current situation. It is an assessment of the likelihood and impact of the risk identified at that time, with the current mitigating controls in place after evaluating the adequacy and effectiveness of the existing controls or measures identified. These controls must already exist and be operating to control or mitigate the risk identified. They must not be planned or in progress.

The difference between the inherent and residual scores represents the effect of the controls in place and demonstrates their value. It acts as evidence when considering if all the controls identified are required. It may be identified where risks are over controlled and resources can be freed up.

Target Score

This is the level of risk that is aimed for when taking into account the risk actions that have been identified and the Council's risk appetite in respect of the area/activity concerned. This should be realistic and recognise that it is difficult to be able to reduce both the likelihood and impact scores. If this is the same as the residual risk score no further action is required and the risk can be accepted. If the risk is not at an acceptable level further actions should be identified to reduce the risk to the target score.

Risk Monitoring

Risk management is an on-going process and requires regular review and monitoring. This process will examine:

- the implementation of agreed actions.
- the effectiveness of the controls that have been put in place.
- how the risk has changed over time.

Where changes have occurred, the cycle will be revisited taking into account the changes and their impact on the service. The effectiveness of any control action will be judged on the basis of its success in either reducing the frequency and/or the severity of an incident.

Review and Reporting

Risk owners present the Strategic Risk Register and high-level Corporate Risk Register to CMT on a monthly basis.

Reports are sent to Accounts & Audit Committee bi-annually informing them on the progress to date with regards risk management. Other service committees identified as 'lead' committees will be provided with relevant risk registers to ensure appropriate oversight. These committees will further provide assurance to the Accounts & Audit Committee on how risks have been managed throughout the year.

6. Communicate and Consultation

Copies of this Policy are available on both the Intranet and Internet. Step by step notes for updating risks on Pentana are held on the Intranet. Increasing risk awareness is a very important part of implementing the risk management strategy as it helps to develop a risk management culture. One to one training is provided to new responsible risk owners.

Any comments or feedback in respect of this document or our risk management process are always welcome and can be addressed to:

Ruth Parker Internal Audit Manager Council Offices Church Walk Clitheroe Lancashire BB7 2RA	Jane Pearson Director of Resources Council Offices Church Walk Clitheroe Lancashire BB7 2RA
---	---

Annex A: Risk Matrix

A risk matrix is a key tool used to analyse the probability and impact of a risk. The Council uses a 5X5 risk matrix, with the score determined by multiplying the 'likelihood' score with the 'impact' score. Scoring risks allows them to be compared with other risks and enables risk owners to prioritise and allocate more resources to those risks posing the greatest threat to the organisation's objectives.

Once completed the risk profile will clearly illustrate the priority of each risk scenario. The categories available are green (low risk, residual score 1-6), amber (medium risk, residual score 8-12) or red (high risk, residual score 15-25). A target risk score is also identified. This is the level of risk we are aiming for when any actions identified are completed.

		IMPACT				
		Marginal (1)	Minor (2)	Moderate (3)	Major (4)	Critical (5)
LIKELIHOOD	Almost Certain (5)	5	10	15	20	25
	Likely (4)	4	8	12	16	20
	Possible (3)	3	6	9	12	15
	Unlikely (2)	2	4	6	8	10
	Very Unlikely (1)	1	2	3	4	5

Green risks sit within our level of risk tolerance, amber risks sit above our level of risk tolerance but remain within an acceptable level and red risks sit above our acceptable level. If the residual risk score is considered too high, actions are required to change the way we manage the likelihood or impact of the risk. There are four options:

Treat: Introduce additional suitable and proportionate controls or actions to reduce the likelihood or impact of the risk to an acceptable level or establish a contingency to be enacted if the risk materialises.

Tolerate: Take an informed decision to accept the consequence and likelihood of the risk accepting the existing level of risk identified, subject to regular monitoring arrangements by management. Actions may not be able to be implemented due to disproportionate cost compared to the benefit obtained, or it is out of the Council's control.

Terminate: An informed decision to not become involved in a risk situation, stop the activity that gives rise to the risk or carry out the activity in a different way to ensure that controls can be implemented.

Transfer: Pass the risk to a third party who shares or bears the impact if the risk materialises, through contracts, insurance or other means.

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS & AUDIT COMMITTEE

meeting date: WEDNESDAY 28 SEPTEMBER 2022
title: GOVERNMENT RESPONSE TO THE CSPL REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS
submitted by: CHIEF EXECUTIVE
Principal Author: MAIR HILL – HEAD OF LEGAL AND DEMOCRATIC SERVICES

1 PURPOSE

1.1 To inform Committee of the Government's response to the recommendations of the Committee on Standards in Public Life

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives – } Consideration of the response
- Corporate Priorities –
- Other Considerations –

2 BACKGROUND

2.1 In January 2019, the Committee for Standards in Public Life published its report "Local Government Ethical Standards". A copy of this report is enclosed as Appendix 1 to this report. The report made a number of recommendations a number of which have already been acted upon by the LGA including the production of a new model code of conduct, which the Council subsequently adopted. A large number of the recommendations however, required action from Government to amend legislation or take action.

2.2 The Government has now responded to those recommendations and that response is enclosed as Appendix 2.

3 ISSUES

3.1 Committee is referred to the response in its entirety, but the main issues have been set out below:

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.*

The Government noted that the LGA did this in January 2021, but notes that it remains the choice of individual councils whether to adopt it. As Committee is aware this Council did so in April 2021 (with amendments to reflect that this authority operates a committee system).

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.*

This issue was raised as a result of the Committee’s work on intimidation in public life. The Government’s response is that it agrees with the principle behind this recommendation and that amendment of the regulations would be an option to achieve it. The government states that it will engage with interested parties to establish the best means possible to achieve this whilst noting that it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest. It does not appear that any steps have been taken to date to make the amendments proposed to the regulations.

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.*

The Government’s view is that it is for Council’s to consider if their code is adequate in addressing the issue of inappropriate use of social media and do not accept that there should be an automatic presumption. Committee will recall that the Council’s code does make clear that communication includes email and social media statements, however it still requires an assessment of whether the conduct complained of relates to their work as a Councillor.

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 representative of the local authority.*

The Government’s response is that it agrees that local authority elected representatives should act in good faith in the public interest and not seek to influence decisions for personal gain, for malicious intent or to further the interests of any business or any other organisations which they may be affiliated with. They note that the LGA model code covers this situation and that it is up to Councils to ensure their codes are updated and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code. They further state that they will keep this under review but have no immediate plans to amend the regulations.

Committee will note that all Councillors were provided with training on the Council’s Code of Conduct in 2021.

Recommendation 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.*

The Government's response is that it will keep with matter under review but has no immediate plans to amend the regulations. These types of interests are however covered as "other interests" in the Council's Code of Conduct.

Recommendation 6 – *Local authorities should be required to establish a register of gifts and hospitality with councillors required to record gifts and hospitality 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.*

The Government response is to note that the LGA model code includes the first part of this recommendation but not the second. Government also notes that there is merit in a best practice on thresholds for registering and that registers should be kept and made publicly available. The Council has adopted the LGA Code including these requirements and holds a register. This is to be made publicly available via its website.

Recommendation 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 the matter".*

The Government's response is that it will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

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.*

The Government's response is that it does not accept that this recommendation is appropriate for legislation on that basis that it would be unworkable. It would be better adopted as best practice whilst noting that recruitment of suitably qualified persons at this rate would be difficult for local authorities to achieve.

Recommendation 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.*

The Government's response is that it does not agree with this recommendation on the basis that the Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices. Whilst the suggestion may have merit it would depend on the circumstances of the matter.

Recommendation 10, 12, 14 & 16

10 – 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.

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.

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, an appeal by a councillor who has had a suspension imposed. The Ombudsman’s decision should be binding on the local authority.

16 – Local authorities should be given the power to suspend councillors, without allowances for up to six months.

Government’s response is that there is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous failed standards regime. The Standards Board regime allowed a politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime. Government also notes that Council’s are not without sanctions under the current regime in that councillors can be barred from Committees or representative bodies and may be publicly criticised. They also refer to party discipline if the member is a member of a political group and that ultimately councillors are held to account through the ballot box.

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.*

The Government agrees in principle but does not see the need for this to be included in legislation.

Recommendation 15 – *The Local Government Transparency Code should be updated to require councils to public 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 sanction applied.*

The Government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standards Committees of the cases and complaints handled and would encourage this as best practice but does not believe there is a requirement to prescribe the form and content of such annual report. The Council has previously reported on such matters and will produce an annual report going forward.

Recommendation 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’s response is that the criminal law provides more appropriate and effective action against breaches of public order, anti-social behaviour and harassment. The occasions where councils would seek to bar councillors from council premises are thought to be extremely rare. Government will consider this further.

Recommendation 18 – *The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.*

Government's response is that the criminal offence is a strong deterrent against corruption and that it does not agree with this recommendation.

Recommendation 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.*

The Government does not agree that this is necessary and has no plans to repeal this section. They consider this is a matter for local determination. They note that there may be merit in consistency but there may be instances where a parish council may want to add to the code of their principal authority to reflect local circumstances.

Recommendation 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.*

The Government's response is that it has no plans to repeal Section (11) of the Localism Act 2011 but will give this matter further consideration.

Recommendation 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.*

The Government agrees in principle with this recommendation and will engage with section representative bodies of all tiers of local government to seek views on amending this order as suggested.

Recommendation 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's response is that it agrees that the principle of openness is essential. The Council's Whistleblowing policy and procedures are published on its website. An annual review is currently taking place and the revised policy will be brought to the next policy and finance committee for approval. This will be reported to this committee as an information item.

Recommendation 24 – *Councillors should be listed as 'prescribed persons' for the purposes for the Public Interest Disclosure Act 1998.*

Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation.

The Government's view is that Councillors would not meet the criteria of being external to an individual's workplace in relation to matters affecting the council and could therefore not be considered as a prescribed person for the purposes of the Act. The

Government however states that it is open to further representations on the matter and how local accountability can be strengthened.

4 **RISK ASSESSMENT**

4.1 The approval of this report may have the following implications:

- Resources – N/A
- Technical, Environmental and Legal – N/A
- Political – N/A
- Reputation – The Council's reputation will be enhanced by its consideration of the Government's response.
- Equality & Diversity – N/A

5 **CONCLUSION**

5.1 That Committee note the contents of this report.

MAIR HILL
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTT
CHIEF EXECUTIVE

For further information please ask for Mair Hill extension 4418

REF: MJH/Accounts & Audit/29/6/2022

Local Government Ethical Standards

**A Review by the
Committee on
Standards in Public Life**

**Committee on
Standards in
Public Life**





Local Government Ethical Standards

Committee on Standards in Public Life

Chair: Lord Evans of Weardale KCB DL

January 2019

Page 77





The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

Lord Evans of Weardale
Chair, Committee on Standards in Public Life





Contents

Executive summary	10
List of recommendations	14
List of best practice	18
Introduction	20
Chapter 1: Overview of standards	22
Chapter 2: Codes of conduct and interests	30
Chapter 3: Investigations and safeguards	52
Chapter 4: Sanctions	65
Chapter 5: Town and parish councils	75
Chapter 6: Supporting officers	81
Chapter 7: Councils' corporate arrangements	86
Chapter 8: Leadership and culture	95
Conclusion	102
Appendix 1: About the Committee on Standards in Public Life	103
Appendix 2: Methodology	104



Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



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



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.



Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.¹

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were 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
- 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

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

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Gooden of Wilkin Chapman LLP for his support and advice throughout.



Chapter 1: Overview of standards

Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as ‘parish councils’ for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.²

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

² Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

The current system

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.



Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

1997 The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

1998 The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.³ The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

³ Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



2005 In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

2007 Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



2010 In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.⁴ The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”⁵

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



Chapter 2:

Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.⁶

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

Variation, consistency, and clarity

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

⁶ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are ‘twin’ or ‘triple’ hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.⁷

Monitoring Officer, North Hertfordshire District Council

In Ashford, a ‘Kent model’ code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.¹⁰

Ashford Borough Council

The issue of parish councils’ codes of conduct is closely related; we discuss this in detail in chapter 5.

Model code of conduct

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a ‘pan-Worcestershire’ code. This also meant that common training could take place across authorities.⁸

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a ‘pan-Worcestershire’ Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.⁹

Worcestershire County Council

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.¹¹

INLOGOV, University of Birmingham

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.¹² A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.¹³ We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

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.

Bullying and harassment

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

¹² Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

¹³ Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10



which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

Example of a bullying provision

Extract from Newcastle City Council code of conduct¹⁴

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: 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.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated “[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance”.¹⁵

¹⁴ Newcastle City Council Code of Conduct. Available at: https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf
¹⁵ Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient” .¹⁶

Examples of bullying behaviour include:

- 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 opportunities¹⁷

¹⁶ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

¹⁷ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.¹⁸

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

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.

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

Intimidation of councillors

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.¹⁹

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.²⁰

Local Government Association

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

¹⁸ Equality Act 2010, section 26

¹⁹ Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

²⁰ Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.²¹

Association of Police and Crime Commissioners

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on 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. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.²² We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.²³

City of Westminster, *Guidance note to members on Register of Interests.*

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

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.

Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.²⁴ This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.²⁵

Lawyers in Local Government

Our 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 question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

²³ City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

²⁴ Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

²⁵ Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.²⁶

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".²⁷ This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."²⁸

26 Ministerial Code, paras 7.13, 7.18

27 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

28 Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in an official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.²⁹

The *High Court, in Heesom v Public Service Ombudsman for Wales*,³⁰ considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We 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.

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.

Purporting to act as a member or a representative

The 2007 model code for local government 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”.³¹ The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



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.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.³²

Hoey Ainscough Associates

*MC v Standards Committee of LB Richmond*³³ drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

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.

Compliance with standards processes

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

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.

Writing codes of conduct

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

³² Written evidence 212 (Hoey Ainscough Associates)

³³ *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively³⁴

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.³⁵ The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.³⁶

**Jonathan Goolden,
Wilkin Chapman LLP**

Drawing up a code 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.

Many authorities have not yet revisited their codes in the light of learning experiences.³⁷

**Jonathan Goolden,
Wilkin Chapman LLP**

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.

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.

34 Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

35 DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

36 Jonathan Goolden, Roundtable, 18 April 2018

37 Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

Example of a clear code of conduct

Extract from Plymouth City Council code of conduct³⁸

Disrepute

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

Misuse of position

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

Use of council resources

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

Advice of Monitoring Officer and Responsible Finance Officer

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

Giving reasons for decisions

Councillors must give reasons when required to by the law or by any council procedures.

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.

Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

Integrity: Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

The Disclosable Pecuniary Interests (DPI) arrangements

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.³⁹

Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.⁴⁰

Mid Sussex District Council

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPs.⁴¹

London Borough of Croydon

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.⁴²

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



Recommendation 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.

Gifts and hospitality

Currently, there is 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.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.⁴³

Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. 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. £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.⁴⁴

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.

⁴³ Written evidence 315 (Transparency International UK)

⁴⁴ Available online at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf, 20



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.

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

Cabinet Office principles for accepting gifts or hospitality

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider’s relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.⁴⁵

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.⁴⁶

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: “[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.”⁴⁷

Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have “[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”. The test of having a ‘disclosable

pecuniary interest *in* any matter’ is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest ‘in’ that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.⁴⁸

North Hertfordshire District Council

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.⁴⁹

Ashford Borough Council

⁴⁷ Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

⁴⁸ Written evidence 22 (North Hertfordshire District Council)

⁴⁹ Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an 'objective test' for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

Tests for actively managing interests in the devolved codes

Scotland

"Whether 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 discussion or decision making in your role as a councillor."⁵⁰

Wales

"[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest."⁵¹

Northern Ireland

"An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents."⁵²

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

Recommendation 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 discussion or decision-making in relation to that matter”.

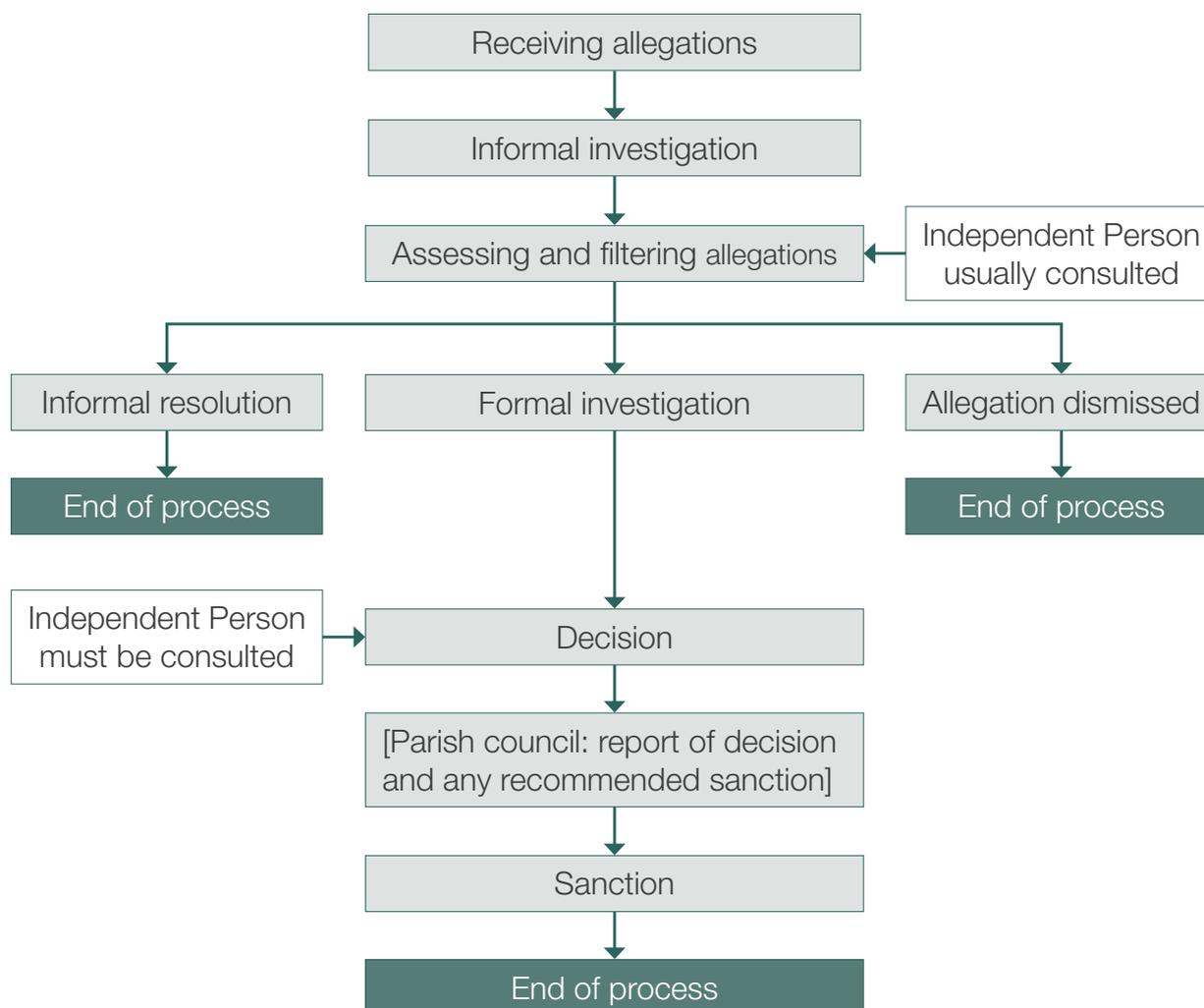


Chapter 3: Investigations and safeguards

Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

The current investigation process





Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

Filtering complaints

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.

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, which asks whether they 'can' investigate the complaint, and whether they 'should'.

Northern Ireland Local Government Commissioner for Standards public interest 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

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

53 Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.⁵⁴
Cllr Dan Cohen, Leeds City Council

Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for 'independence' specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be 'taken into account', they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title 'Independent Person' creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...]⁵⁵
Richard Stow, Independent Person

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority's code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.⁵⁶

London Borough of Sutton

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

Best practice 7: Local authorities should have access to at least two Independent Persons.

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

56 Written evidence 311 (London Borough of Sutton)



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.

The role should also be strengthened. 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.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.⁵⁷

**Dr Peter Bebbington,
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

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.

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.⁵⁸

Hoey Ainscough Associates

Recommendation 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.

⁵⁷ Dr Peter Bebbington, Roundtable, 18 April 2018

⁵⁸ Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

Recommendation 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.

We have noted recent First Tier Tribunal cases⁵⁹ which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

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.

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017_0220 (GRC)



Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.⁶⁰

⁶⁰ Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.⁶¹

Wychavon Borough Council

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

Recommendation 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.

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

Appeals and escalation

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

61 Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.⁶²

Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.⁶³

London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.⁶⁴ This is an under-appreciated safeguard within the current system.

Common issues with local authority standards processes considered by the Local Government Ombudsman⁶⁵

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.⁶⁶

Local Government Ombudsman

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

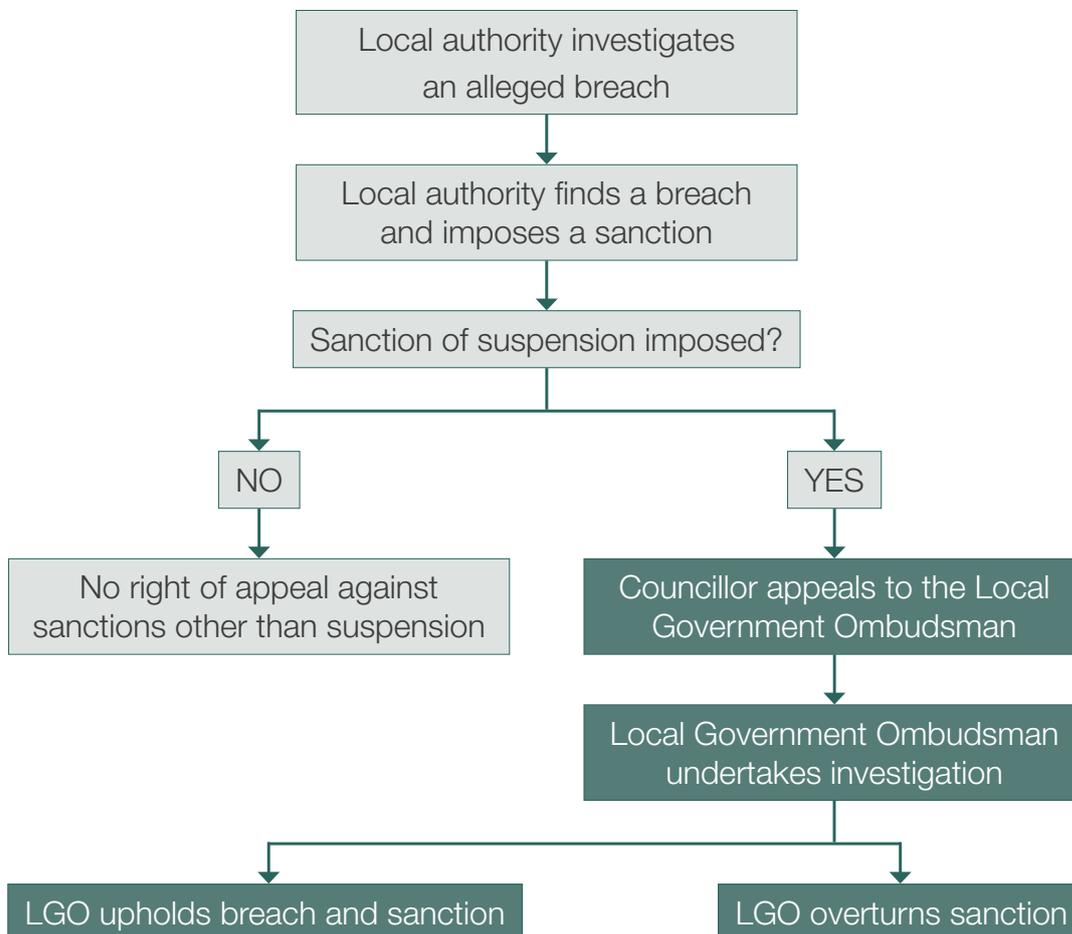
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



Proposed appeals process





Recommendation 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.

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

Recommendation 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.

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

Promoting openness and transparency

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils 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.

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.



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.

Avoiding legalisation

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”⁶⁷

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”⁶⁸

The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.⁶⁹ In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

67 Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

68 Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

69 Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

The current sanctions arrangements

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.⁷⁰

Tonbridge and Malling Borough Council

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.⁷¹

Taunton Deane Borough Council

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.⁷²

Hoey Ainscough Associates

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.⁷³

David Prince CBE

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

Party group discipline

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.⁷⁴

Hoey Ainscough Associates

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.⁷⁵

**Andrew Maughan, Monitoring Officer,
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

Examples of political party disciplinary process used as an alternative to the formal standards process

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.⁷⁶

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

76 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.⁷⁷

**Cllr Rory Love, Chairman,
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.⁷⁸

**Cllr Simon Henig CBE, Chair,
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

The sanction of the ‘ballot box’

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.⁷⁹

**Sandwell Metropolitan Borough
Council**

⁷⁷ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

⁷⁸ Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

⁷⁹ Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.⁸⁰

Wycombe District Council

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”⁸¹ Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].⁸²

Cllr David Gaye

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.⁸³

Cornwall Council

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).⁸⁴

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.⁸⁵

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.⁸⁶ However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

84 Written evidence 106 (Standards Commission for Scotland)

85 Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

86 Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

Giving legal certainty to councils

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

Recommendation 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.

Criminal offences in the Localism Act 2011

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.⁸⁷

Taunton Deane Borough Council

87 Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

Disqualification of councillors

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

Current law on the disqualification of councillors

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



Chapter 5:

Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.⁸⁸

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create a increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

⁸⁸ Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.⁸⁹

Cornwall Association of Local Councils

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

89 Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.⁹⁰

Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.⁹¹

Hoey Ainscough Associates

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.⁹²

Society of Local Council Clerks

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also 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

90 The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)



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.

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.

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.⁹³

Society of Local Council Clerks

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

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.

Investigations and sanctions in town and parish councils

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.⁹⁴

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.⁹⁵

Cornwall Council

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

Recommendation 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.

Following *Taylor v Honiton Town Council*,⁹⁶ a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.⁹⁷

Wychavon Borough Council

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

Recommendation 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.

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,⁹⁸ which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.⁹⁹ The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.¹⁰⁰ We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313_99_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



Chapter 6: Supporting officers

Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.¹⁰¹

Max Caller CBE

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.¹⁰² Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.¹⁰³

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.¹⁰⁴

¹⁰¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰² For example, in sections 59, 60, 66 of the Local Government Act 2000

¹⁰³ Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

¹⁰⁴ Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. 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 (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- 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

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.¹⁰⁵

Lawyers in Local Government

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. 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.

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.

¹⁰⁵ Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

Standing of statutory officers

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.¹⁰⁶ The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.¹⁰⁷

Lawyers in Local Government

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

Recommendation 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.

¹⁰⁶ Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

¹⁰⁷ Written evidence 228 (Lawyers in Local Government)



Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.¹⁰⁸

Max Caller CBE

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.¹⁰⁹

Dame Stella Manzie DBE

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.¹¹⁰

Protect

¹⁰⁸ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰⁹ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

¹¹⁰ Written evidence 305 (Protect)



Recommendation 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.

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.¹¹¹

Protect

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

111 Written evidence 305 (Protect)



Chapter 7:

Councils' corporate arrangements

A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.¹¹² The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

¹¹² National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.¹¹³

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that "[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability."¹¹⁴

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

Responding to the new governance challenges

Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance 'illusion', that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.¹¹⁵

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

113 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

114 "What next for care and health?", *Municipal Journal*, 22 February 2018, 16

115 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.¹¹⁶

Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)*

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

Potential advantages of council nominees as board directors or trustees

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

¹¹⁶ Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected¹¹⁷

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.¹¹⁸

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.¹¹⁹

Audit Scotland, *Councils' use of arm's-length external organisations*

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".¹²⁰ However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

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.

Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.¹²¹

Nicola Greenan, Director, East Street Arts, and LEP board member

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, “[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation”.¹²²

The report also identified a need to consider “[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications”.¹²³ Ney recommended that “[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

¹²¹ Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

¹²² Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

¹²³ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".¹²⁴

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.¹²⁵

Ethical standards and corporate failure

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)¹²⁶

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

¹²⁴ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

¹²⁵ Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

¹²⁶ PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)¹²⁷

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".¹²⁸ The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

¹²⁷ Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

¹²⁸ Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



Northamptonshire County Council (events taking place between 2015-17; report by Max Caller CBE, Best Value Inspector, 2018)¹²⁹

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.¹³⁰

Dame Stella Manzie DBE

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

129 Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf

130 Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.¹³¹

Max Caller CBE

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

¹³¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Chapter 8: Leadership and culture

Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.¹³²
Dame Stella Manzie DBE

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

¹³² Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.¹³³

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.¹³⁴

**Dawn French, Chief Executive,
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.¹³⁵

Dame Stella Manzie DBE

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

¹³³ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁴ Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

¹³⁵ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.¹³⁶

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.¹³⁷

Dame Stella Manzie DBE

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

¹³⁶ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁷ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.¹³⁸

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

Building an ethical culture

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

138 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

Recommendation 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.

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.¹³⁹

**Max Caller CBE, Commissioner,
Northamptonshire County Council**



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.¹⁴⁰

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.¹⁴¹

**Andrew Maughan, Monitoring Officer,
Camden Council**

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.¹⁴²

Darryl Chamberlain, editor, 853 blog

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

¹⁴⁰ House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

¹⁴¹ Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

¹⁴² Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.¹⁴³

**Barry Quirk CBE, Chief Executive,
Royal Borough of Kensington &
Chelsea**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says 'these people are elected and have entitlement to know and there are some rules about confidentiality'. They can't pursue cases where they have individual reasons for not being involved.¹⁴⁴

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

143 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

144 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Membership of the Committee, as of January 2019

Lord (Jonathan) Evans of Weardale KCB DL,
Chair

The Rt Hon Dame Margaret Beckett DBE MP
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah
(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
 - research on the legal framework for local government standards
 - analysis of a sample of 20 principal authority codes of conduct
 - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



**Academics and think tanks roundtable
Tuesday 24 April 2018**

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

*Follow-up telephone conversation

Committee on Standards in Public Life

Room GC.07, 1 Horse Guards Road, London SW1A 2HQ

Tel: 020 7271 2948

Email: public@public-standards.gov.uk

January 2019



Department for Levelling Up,
Housing & Communities

Kemi Badenoch MP

*Minister of State for Equalities and Levelling Up
Communities*

***Department for Levelling up, Housing and
Communities***

Fry Building
2 Marsham Street
London
SW1P 4DF

Lord Evans of Weardale, KCB, DL
Chair Committee on Standards in Public Life
Room G07
1 Horse Guards Road
London
SW1A 2HQ

Email: kemi.badenoch@levellingup.gov.uk

www.gov.uk/dluhc

Dear Lord Evans,

On behalf of the Government, I would like to thank the Committee on Standards in Public Life for its report and the recommendations arising from its review of Local Government Ethical Standards, and to all those who engaged with the Committee's work. Attached is the Government response to the Committee's individual recommendations that were directed at Government.

Vibrant local democracies flourish where the reputation of the local authority is held in high regard, where councillors' decision-making is transparent, valued and trusted by the communities they serve, and where people are willing and confident to put themselves forward as potential candidates. The standards and conduct framework within which local authorities operate must drive out corruption and promote commitment to the principles on standards in public life, and tolerance to the differing views of others. In responding to the review, the Government has taken into account the importance of protecting free speech and freedom of association within the law.

The Government is committed to working with local authorities and their representative organisations to ensure that local government is supported in reinforcing its reputation for ethical local standards.

The fact that this review had been conducted in such a collaborative way with the sector has been apparent from the outset and is borne out in the final report. I am keen that Government builds on the sector-wide enthusiasm for improvement.

The Government agrees with the Committee's conclusion that there have been benefits from local authorities being responsible for ethical standards, including the flexibility and

discretion to resolve standards issues informally. However, we also recognise the role of Government in ensuring that the system is robust.

The number of requests for legislation in the Committee's recommendations to strengthen the standards and conduct framework and its safeguards is considerable. As indicated in this response, the Government believes that some of these suggestions do not need a legislative response but can be more appropriately, effectively, and swiftly taken forward by local authorities as best practice. The Committee will recognise that the Government and Parliament has taken a different view on these matters when it legislated for the Localism Act 2011.

I thank the Committee for their work on the review and for their patience whilst Government carefully considered their recommendations, and I personally look forward to continuing to work with you as Government progresses the commitments made in this response with the sector.

Yours sincerely,

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

KEMI BADENOCH MP

**Minister of State for Equalities
and Levelling Up Communities**

Government response to the Committee on Standards in Public Life review of local government ethical standards

This Government response confines itself to the Committee's recommendations directed at Government, other than with regards to the first recommendation. The response to recommendations 10, 12, 13, 14 and 16 have been grouped together and therefore appear out of numerical order below.

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.

The Localism Act 2011 states that relevant authorities must promote and maintain high standards of conduct by members and co-opted members. It requires these authorities to adopt a code of conduct for their councillors.¹ Authorities can determine the content of their own code of conduct. However, codes must conform to the seven 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Relevant authorities for the purposes of these requirements include local authorities in England, namely county councils, district councils, London borough councils and parish and town councils.

It is for individual councils to set their own local code, in line with the Act. The Government has previously published a light-touch illustrative code of conduct.

The Local Government Association has worked with sector representative bodies to update its own suggested code of conduct, with the intention that this new suggested code could establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances and priorities. The Local Government Association published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.

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.

¹ References to councillors in this document also should be deemed to include elected mayors.

This issue was brought up in the Committee's work on intimidation in public life, and the Government has already taken forward several steps in this regard. The Government is open and receptive to further steps to help prevent intimidation.

The Government agrees with the principle behind this recommendation – which safeguards elected representatives - and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it.

The Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address.

Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

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.

The Government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.

As the Government outlined to Parliament in March 2021 on tackling intimidation in public life: 'It is important to distinguish between strongly felt political debate on the one hand, and unacceptable acts of abuse, intimidation and violence on the other. British democracy has always been robust and oppositional. Free speech within the law can sometimes involve the expression of political views that some may find offensive': a point that the Government has recognised in a Department for Education policy paper². But a line is crossed when disagreement mutates into intimidation, which refuses to tolerate other opinions and seeks to deprive others from exercising their free speech and freedom of association.'

It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

² Higher education: free speech and academic freedom Feb 2021
<https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom>

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.

The Government agrees that local authority elected representatives should act in good faith in the public interest and not seek to influence decisions for personal gain, for malicious intent or to further the interests of any business or any other organisations which they may be affiliated with.

The Local Government Association have updated their [own suggested code of conduct](#) to state that the code applies when “[a member’s] actions could give the impression to a reasonable member of the public with knowledge of all the facts that [they] are acting as a [member]”.

It is for individual local authorities to ensure that their codes of conducts are regularly updated, comprehensive and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

Recommendation 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.

The electorate must have confidence that the decisions of their elected representatives are being made in the best interests of the community they have been elected to serve. Unpaid roles may need to be declared if it is relevant to council business, and councillors should recuse themselves if necessary if discussions relate to private bodies, they are involved in.

The Government is mindful that councillors have a right to a private life, and rights of freedom of association outside their role as a councillor. It is frequently the case that people in public life have a complex pattern of interests and play a variety of roles with different types of organisations, including community interest groups and charities.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

Recommendation 6

Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record 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.

The Local Government Association's suggested code of conduct published in January 2021 includes a requirement for members to "register... any gift or hospitality with an estimated value of at least £50". However, it did not contain any requirements relating to the total value of gifts or hospitality received from the same source over a sustained period.

Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The Government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available.

Recommendation 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 the matter".

Section 31 of the Localism Act 2011 requires that a councillor must not participate in a discussion or vote on a matter where they have a disclosable pecuniary interest in any matter to be considered at the meeting. Section 30(3) of the Localism Act 2011 further provides that any relevant pecuniary interests of a councillor's spouse or partner are considered as a disclosable pecuniary interest of the councillor.

The Committee's report reflects concerns that the disclosable pecuniary interest arrangements infringe on the privacy of a councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.

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.

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh" and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.

When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.

Recommendation 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.

The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices.

The substantive policy suggestion has merit but will depend on circumstances. In cases where there is no case to answer from an unfounded complaint, it should not necessarily be a legal requirement to publish details of that unfounded complaint.

Recommendation 10

A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.

Recommendation 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.

Recommendation 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.

Recommendation 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, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.

Recommendation 16

Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.

It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors.

On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box.

As part of the Government's response to the Committee's report on intimidation in public life, the Government recommended that every political party establish their own code of conduct for party members, including elected representatives.

The Government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

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.

The Government agrees in principle.

Initial soundings with the sector indicate that some local authorities already provide legal indemnity for Independent Persons.

The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation.

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.

The Government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled and would encourage this as best practice by the sector.

The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

Recommendation 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.

The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.

The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.

Recommendation 18

The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

It is a criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption.

The Government does not agree with this recommendation, but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption.

The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

Recommendation 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.

The Government does not agree that this is necessary and has no plans to repeal Section 27(3) of the Localism Act 2011.

The Government considers that the adoption of the principal authority's code or the new model code is a matter for local determination.

There are merits in achieving consistency within principal authority areas to eliminate potential confusion amongst constituents and elected members but there may be instances where a parish council may want to add to the code of their principal authority to reflect local circumstances.

Recommendation 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.

The Government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

Recommendation 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.

The three statutory officers in local government are the Monitoring Officer, the Head of Paid Service (Chief Executive) and the Chief Finance Officer (often referred to as the Section 151 Officer).

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons. The Committee consider that the disciplinary protections for statutory officers should be enhanced, by extending disciplinary protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

The Government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations.

The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

Recommendation 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.

The Government agrees with the principle that openness is essential.

Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites, and Government is recommending that this is adopted as a best practice recommendation.

The Government published the UK National Action Plan for Open Government 2021 – 2023 in January 2022. This includes a commitment on local transparency.³ The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.

Recommendation 24

Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1998.

Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. They are prescribed by an order made by the Secretary of State (for Business, Energy and Industrial Strategy) for this purpose. A complete list of prescribed persons is available here: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>.

Local councillors would not meet the criteria of being external to an individual’s workplace in relation to matters affecting the council and could therefore not be considered as a ‘prescribed person’ for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament.

However, the Government recognises that this may provide a further check and balance against council corruption or wrongdoing and is open to further representations on the matter on how local accountability can be strengthened in this regard.

³ <https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023#local-transparency>

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS & AUDIT COMMITTEE

meeting date: WEDNESDAY 28 SEPTEMBER 2022
title: OMBUDSMAN REPORT
submitted by: CHIEF EXECUTIVE
Principal Author: MAIR HILL – HEAD OF LEGAL AND DEMOCRATIC SERVICES

1 PURPOSE

- 1.1 To inform Committee of the Ombudsman's report and the steps proposed by the Council in response.
- 1.2 Relevance to the Council's ambitions and priorities:
- Community Objectives –
 - Corporate Priorities –
 - Other Considerations –

2 BACKGROUND

- 2.1 The Local Government Ombudsman issued a report dated 14 July 2022 (but embargoed until 18 August 2022) relating to a complaint which was upheld. A copy of that report is enclosed as Appendix 1. The report finds fault in that the Council had not provided evidence that it had carried out all the recommendations it had agreed with the Ombudsman in April 2021.
- 2.2 As a result, the Ombudsman has made a recommendation that within 3 months of the report the Council should provide, the Ombudsman with evidence that:
1. It has implemented its new policy on Reasonable Adjustments for disabled people;
 2. It now keeps adequate records relating to decision on reasonable adjustments for disabled service users; and
 3. Its officers are aware of the Council's new policy and its obligations under equalities legislation.
- 2.3 The Council had provided the Ombudsman with evidence that the policy had been communicated to Heads of Service by the Chief Executive with instructions for them to implement it within their service and that the policy appeared on the Council's website. Since the report was issued the Council has now provided further evidence to demonstrate that recommendations 1 and 2 have been complied with and the LGO has confirmed that these recommendations are now complete.
- 2.4 With regard to recommendation 3, the Council has also provided the LGO with details of refresher training on the Equalities Act 2010 to be provided to CMT and all Heads of Service by Bethan Evans along with details of how this training will be provided to all

officers in each directorate thereafter by the Head of Legal and Democratic Services, the Head of Human Resources, and the relevant Head of Service. The LGO has confirmed that this training is sufficient for it to confirm compliance with recommendation 3. Compliance will be confirmed once the training has taken place. The Council will therefore have complied with all recommendations in the Ombudsman's report.

3. ISSUES

3.1 Whilst the Council has taken steps and has complied with recommendations of the LGO report it is important that it uses this finding as a learning opportunity to ensure that not only is it compliant but that it seeks excellence in customer service and ensures that people with disabilities can access its services as easily as those without. This is the approach which the LGO itself took following a finding by the court in 2017 that it had failed to provide reasonable adjustments to a person with disabilities. In May 2022, the LGO published a useful report for Council's entitled "Equal access: Getting it right for people with disabilities – Focus report: learning lessons from complaints May 2022". A copy of this report is enclosed as Appendix 2. Committee will note the various common issues and learning points which are highlighted within it. There is also a list of positive steps which Councils can take to improve services as well as scrutiny questions for Councillors.

3.2 This matter was reported to Policy and Finance Committee on 27 September 2022 with a recommendation that:

In order to ensure that the Council's equality duties embraced at all levels of the organisation it is proposed that the following actions are taken:

- Training on the Equalities Act 2010 should be included in the induction training programme for new officers. The training provided should be reviewed at least annually, but in any event whenever amendments are made to the Equality Act 2010.
- Training on the Equalities Act 2010 to be provided to current members and be incorporated into the induction programme for new members. This will provide members with the requisite knowledge to enable them to scrutinise the Council's functions and hold it to account.
- A further report be brought to Committee setting out how the Council meets the steps for promoting good practice set out in the LGO guidance and/or how it proposes to ensure that it does;
- An equalities working group be established to carry out a comprehensive review of all aspects of the Council's Equality Act duties and make recommendations to Committee.

The resolution of Policy & Finance Committee and the steps taken to implement the actions approved will be further reported to this committee.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – N/A
- Technical, Environmental and Legal – N/A
- Political – N/A
- Reputation – The Council's reputation will be enhanced by its consideration of these matters and taking effective steps to deal with the matter.
- Equality & Diversity – The steps proposed will positively impact on issues of equality and diversity.

5 **CONCLUSION**

5.1 That Committee note the contents of this report.

MAIR HILL
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTT
CHIEF EXECUTIVE

For further information please ask for Mair Hill extension 4418

REF: MJH/Accounts & Audit/28/09/2022

This page is intentionally left blank

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Ribble Valley Borough Council
(reference number: 22 000 924)**

14 July 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X The complainant

Report summary

Environmental Services, Public Protection & Regulation

The Equality Act 2010 requires those who provide services to the public to consider making reasonable adjustments for individuals with disabilities.

Mr X has a disability, and in an investigation we completed in April 2021 we found fault in the way the Council dealt with him.

We recommended a remedy because the Council had no system in place to show it:

- asked individuals about whether reasonable adjustments for disabilities were needed to allow access to its services;
- considered requests for adjustments and decided what changes would be reasonable for it to make;
- kept records of its decisions, so that its officers are aware of adjustments they needed to make.

We found fault and the Council agreed to carry out our recommendations, but it did not carry out all of them. The Council did eventually provide us with details of its new policy, but this took more than a year to arrive and only happened after frequent and numerous reminders. Despite further reminders, the Council has not yet provided evidence that it has complied with the remaining recommendations. We still have no evidence to show:

- the Council has a system to keep records of its decisions on reasonable adjustments; and
- its officers are aware of the Council's legal obligations and act in accordance with them.

As a result, we have decided to use our powers to issue this public interest report for the Council's non-compliance with our recommendations.

Finding

There is fault because the Council did not provide evidence that it had carried out all the recommendations it agreed with the Ombudsman in April 2021 (reference: 20011938).

There is also fault in unreasonable delay by the Council in providing us with details of its new policy on reasonable adjustments for disabled service users.

The faults we found are likely to cause significant injustice to a vulnerable section of the public. To avoid further injustice, the Council should act without further delay.

Recommendations

Within three months from the date of this report, the Council should provide us with evidence to show that:

- it has implemented its new policy on reasonable adjustments for disabled people;
- it now keeps adequate records relating to decisions on reasonable adjustments for disabled service users; and

-
- its officers are aware of the Council's new policy and its legal obligations under equalities legislation.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. In an earlier investigation, we considered a complaint from an individual that we will call Mr X (reference: 20011938).
2. Mr X had complained that male officers visited him, even though he had warned the Council that this might affect him because he suffers from post-traumatic stress disorder (PTSD).
3. This complaint deals with the Council's failure to act on all the recommendations we made in April 2021 which the Council had agreed to carry out within 12 weeks.

Legal and administrative background

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. When we find fault causing injustice, we may recommend a remedy for any injustice caused to the person affected, and service improvements to prevent injustice being caused to others in future by similar fault. (*Local Government Act 1974, section 30, as amended*)
6. We consider six criteria when deciding whether to issue a public interest report, one of which is non-compliance with an Ombudsman's recommendation.

How we considered this complaint

7. We produced this report after examining relevant documents, including our final decision on Mr X's original complaint, our letters and emails to the Council and its responses.
8. Mr X and the Council had an opportunity to comment on a draft of this report. We considered their comments before completing this report.

What we found

Legal background

9. The reasonable adjustment duty is set out in the Equality Act 2010 and applies to any body that carries out a public function. Its aim is that, as far as reasonably possible, people who have disabilities should have the same standard of service as non-disabled people.
10. Councils need to:
 - check whether service users have disabilities that might affect how the Council should deal with them;
 - be prepared to implement reasonable adjustments in how they work to allow individuals with disabilities to access its services; and
 - keep a record of what adjustments are found to be reasonable and update the record if changes are needed.

What happened

11. We made recommendations after we found fault in an earlier investigation in April 2021.
12. Mr X suffers from PTSD. His PTSD is affected when faced with males in positions of authority. He had been dealing with the Council in relation to issues affecting his land and told the Council about his condition. Mr X asked that if its officers needed to visit him, the Council should either:
 - send female officers to meet him; or
 - give him warning if male officers would visit, so he could arrange adequate support.
13. Without warning, two male officers visited Mr X. Mr X complained and the Council apologised. However, it said it could not always ensure that female environmental health officers would be available. The Council said one of the officers was aware of Mr X's condition but had simply forgotten about it. The Council said that on the day of the visit, only male officers had been available.
14. We expect councils, at first contact with a service user, to enquire about any reasonable adjustments they might need to make, to act in accordance with adjustments it agrees, and to keep proper records of issues and outcomes so all staff members can provide fair, reasonable and equal access to all those who need its services.
15. We asked the Council if it had a system in place to deal with reasonable adjustments for service users with disabilities. It did not.
16. We made the following recommendations, that the Council agreed to carry out within 12 weeks of our final decision. The Council agreed to ensure that:
 - it has effective policies in place so that it meets its obligations to disabled service users and to keep adequate records to show it has done so; and
 - its officers are aware of the Council's obligations and act in accordance with them.
17. It is now more than a year since the Council agreed to carry out this remedy. It did eventually, in April 2022, produce a policy for its officers to follow so that it might meet its obligations on reasonable adjustments. In May 2022, the Council informed its Heads of Service about the new policy, and made it available to the public on its website. It has also made arrangements for training, but cannot confirm when this will happen.
18. However, we still have no evidence to show all remaining parts of the remedy were completed to our satisfaction.
19. In the last year, we have made sixteen separate requests for updates and for information to show the remedies had been satisfied. On six occasions, the Council did not respond at all to our contact. At the time of writing this report, the Council had not provided us with evidence to show that:
 - it now keeps adequate records to show it has implemented the policy; and
 - its officers are aware of the Council's obligations and act in accordance with them.
20. In its response to an earlier draft of this report, the Council said:

-
- it would apologise on behalf of the Council, but asks us to understand the difficulties it has faced in the last two years as a small council with limited resources responding to the pandemic, while keeping staff safe and supporting businesses and residents; and
 - though it understands our concerns, it has agreed to our recommendations, the remainder of which will happen as soon as practicable.
21. The Council suggested that, in these circumstances, a public interest report might not be a proportionate response to its apparent tardiness.
 22. We have checked our records, including the cover letter we sent to the Council when sending our investigator's draft decision for the earlier investigation. In that letter we asked the Council to say whether there would be any issue completing the remedy because of changes to Council services following COVID-19.
 23. The Council had responded to the draft of the earlier decision to say it accepted our recommendations and that it would endeavour to implement them within our timescales. During the year that followed, we were told of a delay to allow for a report to be written and presented to the next personnel committee meeting. The Council did not say then, or at any other time, that its ability to comply with the agreed remedy would be affected by the COVID-19 pandemic. Nor did it mention the pandemic in its many responses in a year of requests for updates on when it would complete the agreed actions from the earlier investigation.

Conclusion

24. Where we find fault and make recommendations, we expect councils to carry them out within a reasonable time. This is important because, until changes happen, other individuals might be caused a significant and unnecessary injustice by the same fault.
25. It is also important that councils respond to our requests for evidence and information in a timely manner to avoid wasted effort and unnecessary expense to the public purse.
26. We recognise the last few years have been very difficult for many people and organisations, including all public bodies that had to continue to deliver services during the COVID-19 pandemic.
27. In response to these difficulties, we changed the way we worked. When finding fault and making recommendations, we asked whether allowances were needed because of the pandemic. The Council did not say the pandemic might prevent it from carrying out the agreed remedy. We have no record of it mentioning the pandemic as a reason preventing it from responding to our emails and letters, until it responded to a draft of this report.
28. We are not persuaded by the Council's suggestion that our decision to issue this report is disproportionate. The Council could and should have responded to all of our letters. It could also have agreed a reasonable extension for any delay caused by the pandemic. We were, and are always, prepared to listen and make reasonable accommodations for councils operating in difficult circumstances.
29. In addition, the recommendations we made related to the requirements of the Equality Act which has been in place since 2010. The Council should have had a suitable policy, relevant training, and adequate record keeping in place before the pandemic.

-
30. We welcome that, eventually, following numerous prompts, the Council has carried out part of the agreed remedy. However, it is disappointing that it has failed to carry out all the recommendations it agreed to.
 31. The Council's failures are likely to have had consequences for individuals that could be extremely serious, as they are likely to affect a particularly vulnerable section of the public.
 32. The Council's failure to act, along with the unreasonable delay in doing so, is wholly unacceptable, as it could undermine public trust in our system of redress.
 33. We expect the Council to provide us with evidence to show it has carried out the remedy it has agreed without further delay.

Recommendations

34. Within three months from the date of this report, the Council should provide us with evidence to show that:
 - it has implemented its new policy on reasonable adjustments for disabled people;
 - it now keeps adequate records relating to decisions on reasonable adjustments for disabled service users; and
 - its officers are aware of the Council's new policy and its legal obligations under equalities legislation.
35. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

36. We have completed our investigation into this complaint. There was fault by the Council found in an earlier investigation which remained unresolved.

Equal access:
*Getting it right for people
with disabilities*

Contents

Ombudsman's foreword	1
Background	3
Common issues and learning points	5
> Failure to anticipate need for reasonable adjustments when developing policies and procedures	5
> Failure to ask if reasonable adjustments are needed	7
> Failure to anticipate reasonable adjustments where the council is aware of a person's disability	9
> Failure to make requested reasonable adjustments	11
> Failure to make adjustments in a timely way	13
> Failure to ensure third parties acting on behalf of local services are considering Equality Act duties	15
> Imposing adjustments without considering individual needs	16
> Failure to record agreed adjustments	17
> Failure to review reasonable adjustments	19
Promoting good practice	20
Local Scrutiny: Questions for Councillors	21

Ombudsman's foreword



Accessing local services is not always simple. People are sometimes required to navigate unfamiliar and complex processes and procedures to get the support they need. For people with disabilities, this can be especially daunting as they often need help to access and communicate with these services because of their disability.

The Equality Act 2010 requires local services to make sure people with disabilities can access their service as easily as people without disabilities.

The complaints we investigate in relation to Equality Act duties are mostly about failures by local services – such as local councils, social care providers and schools – to make reasonable adjustments for people with disabilities. This includes a large proportion of complaints from people with “hidden disabilities” which may not be immediately apparent when a person first accesses a service.

The COVID-19 pandemic has brought “hidden disabilities” more into the public consciousness as schemes such as “sunflower lanyards” have become more widely used. However, it should not be necessary for people with hidden disabilities to make themselves visible to services unless that is their personal choice. One of the learning points from this report is that local services should be proactive in asking every person who approaches the service whether they need any changes to be made in the way they are dealt with.

In some areas, COVID-19 has also accelerated the shift we’ve seen happening over the past decade in how local services are delivered, with more and more being automated or delivered online. While we recognise the benefits this can bring to both local services and service users, it is important that the needs of people with disabilities are not lost in the move to deliver more services remotely.

As local services begin to work towards a post-pandemic future, we would urge them to review the benefits and drawbacks that remote service delivery might have on people with disabilities. In this report we share the example of a school which restricted admission appeals to written only submissions due to the impact of the pandemic without providing an alternative means of contact for people unable to communicate in this way.



The Equality Act 2010 requires local services to make sure people with disabilities can access their service as easily as people without disabilities



Duties under the Equality Act are not limited by the type of service provided. Those services giving direct or cognitive support, like social care or educational support, may seem a more obvious place for the duty to take effect. But in this report we share stories of people who have had difficulties accessing a wide range of services from planning to parking.

The stories in this report represent a small sample of everything councils do and may not represent the regular experience for most people. Nevertheless, by sharing the key learning points from when things have gone wrong, it will help councils to reflect on and improve their services for people with disabilities.

The most important learning point we highlight in this report is the duty for local services to anticipate the needs of people with disabilities in their area. This means putting the needs of people with disabilities at the heart of everything the service does, designing services with them in mind, so that their needs can be met before they even come through the door, pick up the phone or write a letter.

Michael King
Local Government and
Social Care Ombudsman
May 2022

Background

Public sector equality duty

The Equality Act 2010 protects the rights of individuals and supports equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.

The Equality Act also makes it unlawful for organisations carrying out public functions to discriminate on any of the nine listed protected characteristics. The public sector equality duty also sets out duties for such organisations to stop discrimination. The 'protected characteristics' referred to in the Act include age and disability.

Indirect discrimination may occur when a person or service provider takes the same approach to decision making or service provision for everyone. This may then put people sharing a protected characteristic at a particular disadvantage.

The public sector equality duty requires all local authorities (and bodies acting on their behalf) to have due regard to the need to do the following.

- > Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- > Advance equality of opportunity between people who share a protected characteristic and those who do not.
- > Foster good relations between people who share a protected characteristic and those who do not.

The duty means public authorities must consider equality and good relations when they develop policies and deliver services. They must also keep these issues under review.

Reasonable adjustments

Local public services must take account of the needs of different people when designing and delivering services. As well as meeting their legal obligations under the Equality Act, this careful consideration is part of basic good administrative practice. Services that properly consider a service user's needs in their design and delivery are much more likely to be effective and efficient at achieving the desired outcomes.

The Act places a duty on organisations to make changes to their services to ensure that they are accessible to disabled people as well as everybody else. This is referred to as making "reasonable adjustments".

A reasonable adjustment can mean alterations to buildings by providing lifts, wide doors, ramps and tactile signage, but can also mean changes to policies, procedures and staff training to ensure that services work equally well for people with learning disabilities.

The duty is 'anticipatory'. This means public bodies are not allowed to wait until a disabled person wants to use their services – they must think in advance about what people with a range of impairments might reasonably need.

As well as considering needs arising from visible, often physical health issues, this means local services must think about how invisible or hidden disabilities might affect people who need to access their service. These might be because of their mental health or because of less immediately obvious physical illnesses, learning difficulties and disabilities. Services need to decide whether to make reasonable adjustments so the person can, as far as possible, have the same experience as someone without that need.

Our role and experience

In 2017 the courts found we had failed to provide reasonable adjustments for a person with disabilities. We saw this as a learning opportunity and have since made significant changes to our working practices. These include asking people at every stage of our process whether they need us to make changes to the way we communicate with them, and keeping this under review. We have also worked on increasing the range of reasonable adjustments we are able to make and produced guidance for our staff. We have also made changes to our IT systems so we can more easily record and review any reasonable adjustments we have put in place.

Our learning has not stopped with this one case. We continue to refine our processes and procedures based on reviews of the complaints we deal with, and learning from our investigations into how local services respond to requests for reasonable adjustments.

In this report we have drawn experiences from our investigations into complaints covering the full range of services provided by local services in our jurisdiction. This includes examples from services like planning and benefits, which may be less familiar with making reasonable adjustments than a service like social care.

The law says we cannot investigate complaints where a person has a right of appeal to court. If a person believes they have been discriminated against because of the actions of a service provider, they may make a claim for damages in county court.

However, in most cases we will decide to look into complaints about a failure by local services to provide reasonable adjustments. This is because it would not generally be reasonable to expect complainants to go to court. The government guidance backs this up in saying:

“Defending or taking a claim in court can be lengthy, expensive and draining. It can also have a damaging impact on the reputation of an organisation. It is likely to be in everyone’s interest to try to put things right before a claim is made to a court”.

If we find there has been injustice as a result of a failure to provide reasonable adjustments, we will not provide damages in the same way as the courts. We will recommend the service takes action to remedy the situation. This may include a financial payment to acknowledge any distress caused and, where appropriate, actions to improve the local service to avoid the same fault affecting others.

Complaint statistics and trends

We have recently developed how we categorise complaints and enquiries involving Equality Act issues to enable us to better report on trends. In the majority of cases, problems with Equality Act duties are registered as a secondary category as they are usually intertwined with a primary substantive matter, such as housing or adult social care for example.

In the last year (April 2021 – March 2022) people made 122 complaints and enquiries to us about councils, and other local services, in which we recorded Equality Act duties as a factor in the complaint.

In the same period we agreed to make reasonable adjustments to the way we work for people using our service on 1,398 cases, regardless of what the complaint was about. This is approximately 8% of all the complaints and enquiries we received (16,946).

Common issues and learning points

Failure to anticipate need for reasonable adjustments when developing policies and procedures

Local public services have a duty to ensure they anticipate the needs of people with a wide range of disabilities when developing policies and procedures, to ensure they are not discriminated against.

In most cases local services will do this by carrying out an equality impact assessment. Services should not pay lip service to equality issues when completing these assessments. They should put the needs of disabled people at the heart of any policy or procedure being developed.

Over recent years we have seen local services move towards delivering more services online. While this can have benefits in providing quick and easy access for most of the public as well as saving costs, it has the potential to disadvantage those who may need services delivered face-to-face or by telephone to meet their needs.

During the COVID-19 pandemic services had to rapidly adapt to changing rules around contact with the public. This meant more services were delivered remotely and online. However public services still have a duty to anticipate the needs of people with disabilities and in moving away from face-to-face contact to online services there is a risk that some people's needs will not be met.

Dealing with complaints is a key frontline service and so local services should pay particular attention to ensuring complaints processes are accessible for everyone who might use their services. Providing a range of ways for people to raise complaints not only ensures fair access for all but also provides services with opportunities to learn from complaints, shining a light on underlying problems that have the potential to cause future injustice.



Jane's story

Case reference: [20 002 492](#)

Jane complained the council breached disability discrimination law and human rights law when it installed public litter bins that are not accessible for use by disabled people, small adults and children. She thought the council had not properly considered its responsibilities under the relevant law. She cannot use the bins but she also considers there is a wider injustice to others who will be similarly affected.

The council, and others acting on its behalf, have duties to ensure they consider both the public sector equality duties and reasonable adjustment duties when making decisions about providing services.

Our investigation said the council could not show it had considered its public sector equality

duty when reaching a decision on the bins. This was because the decision had been made by a contractor and the council did not have access to information about how the decision was made. It called into question whether proper consideration was given to the council's duties. That was fault.

How we put things right

As part of our recommendations, the council agreed to publish its Local Environmental Quality Plan. This set out its approach to litter disposal infrastructure, detailing how it will have proper regard to its public sector equality duties and reasonable adjustment duties. The council also said it was undertaking a review of bins in its area.



Amma's story

Case reference: [20 004 888](#)

Amma applied for a place at a school for her child and it was refused. She appealed to the school's independent appeal panel.

As part of the school's admission appeal, we found the school was holding 'written-only' appeals to allow equity of access during the COVID-19 pandemic.

The school said this was because there was a "higher proportion" of appellants who may not have access to the technology to 'attend' a video hearing, and/or for whom there is a potential language barrier. It said deciding all appeals on just written submissions was fairer. However, the school did not consider how this decision may have had a disproportionately negative effect on those unable to present their case in writing.

The Equality Act 2010 places an anticipatory duty on local public services to make reasonable adjustments for those with disabilities. This means the school should have considered, in advance, what steps it could take to ensure equal access to any appellant who might find it difficult to make contact in writing.

We criticised the school for not offering alternative ways for appellants to make their appeal submissions – for example, by making a voice recording rather than a written case. It could not therefore show it had met its public sector equality duty.

The school said its "Notice of Appeal" explained it could make reasonable adjustments. However, the school only gave an email address when it invited appellants to submit questions on its case to the panel. It did not give other ways to contact the school if an appellant had difficulty with writing.

We found the school at fault for not fully considering its Equality Act duty and had failed to anticipate its duty to those who may have difficulty writing.

How we put things right

This did not disadvantage Amma in bringing her appeal but we recommended the school make changes to its appeals process to ensure it complied with its duties under the Equality Act 2010.

Failure to ask if reasonable adjustments are needed

The Equality Act 2010 places a duty on local public services to “anticipate” the needs of people with disabilities accessing their services.

We routinely ask everyone who accesses our service whether we need to make changes to the way we communicate with them at every stage of our process.

We consider it to be good practice for local services to do this whenever they interact with service users, whether this is the first time a person has used the service or not.

By asking service users if they need to make any changes to how they communicate, local services can provide people with disabilities an opportunity to discuss any barriers they might face accessing the service and possible solutions. This is particularly important with hidden disabilities where people may feel unable to volunteer their need for an adjustment until asked.



Terri's story

Case reference: [19 000 931](#)

Terri owns land and runs a business from it. She has a trailer on the land which she uses as a field shelter. The council served Terri with an enforcement notice which she successfully appealed.

The council then carried out a site visit and discussed the appearance of the trailer. Terri explained to us that she had autism and had found it hard to communicate with the council during the site visit. She said she would have liked notice of the visit so she could arrange to have someone with her.

Following the meeting Terri agreed to paint the trailer based on sample colours shown to the council. When Terri finished painting the trailer she sent the council a photograph. The council said the trailer had not been painted in the agreed colour.

In response to our enquiries the council confirmed the colour of the trailer was acceptable, however it had not informed Terri. We said this was fault. The council agreed to make reasonable adjustments for Terri in future and confirmed to her the trailer had been painted in an appropriate colour.

Learning point

It will not always be appropriate for enforcement bodies to give advance notice of visits. However, we would expect bodies to check what reasonable adjustments a person might need and, if appropriate, put these in place as soon as practicable.



Simon's story

Case reference: [19 019 811](#)

Simon asked the council for help with his care needs.

The council arranged a telephone call to assess his needs. It told him this would last 20 minutes. Simon says he told the council he was unable to manage a longer call as he has Autistic Spectrum Disorder. However, the call lasted an hour. Simon says he asked for a face-to-face meeting but the council refused.

Our investigation found the council at fault because there was no evidence it had asked Simon if he needed any reasonable adjustments during the initial call. It had also failed to record Simon's request to only speak for 20 minutes.

The council's policy said it can send questions in advance so service users can prepare for the

telephone assessment. But this did not happen in this case.

We found the council had failed to have due regard to its obligations under the Equality Act. We said this caused Simon distress which was compounded by the need to make a complaint and further telephone calls to resolve the situation.

How we put things right

The council agreed to our recommendation to pay Simon a small financial remedy to acknowledge the distress caused. The council also agreed to remind staff of the need to check whether service users need adjustments to the way they usually work, and to review its staff training needs in this area.



Failure to anticipate reasonable adjustments where the council is aware of a person's disability

There will be cases where local services are already aware of a person's disability because of services it is already providing to them. This is particularly relevant to care services for adults and children, and housing.

Where a service is aware of a person's disability it should anticipate their needs and make any necessary reasonable adjustments in consultation with them or their representative. The service should not wait for the person to tell them what adjustments they require.



Anette's story

Case reference: [20 007 318](#)

The council became involved with Annette's children due to concerns about her mental health and other issues in the home.

Although the council was aware Annette had mental health issues it failed to ask her if she needed it to make any reasonable adjustments in the way it communicated with her. Annette told us that, if the council had asked, she would have explained that she finds communication difficult and would have benefited from additional time and support.

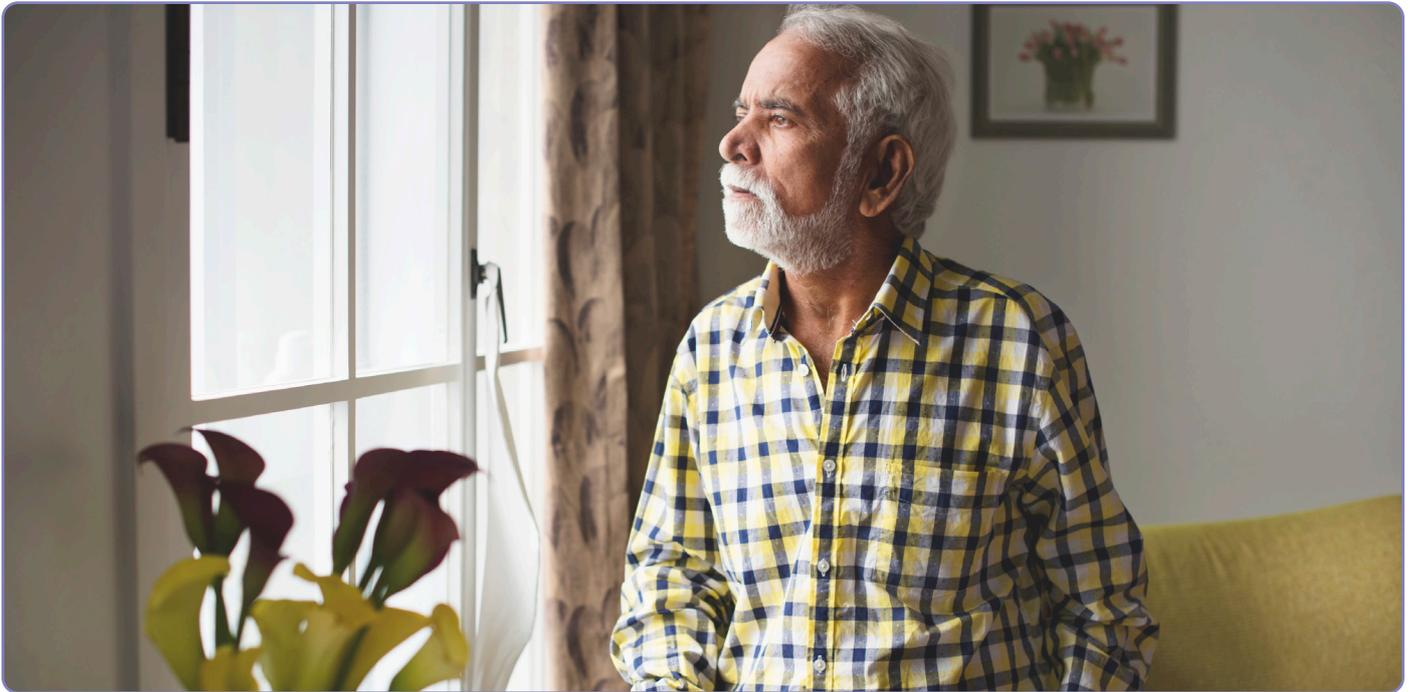
The council did agree that Annette's father could be present to support her at meetings however it did not record this as a reasonable adjustment.

Annette reminded the council on several occasions that she had a disability. This should have prompted the council to ask if she needed it to make any reasonable adjustments but this did not happen.

The council's failure to make reasonable adjustments meant it became difficult for both parties to communicate. Annette sent the council large volumes of emails and text messages which it was unable to respond to. This increased Annette's sense that her concerns were being ignored.

How we put things right

We found the council's actions had left Annette with a feeling of uncertainty. The council agreed to pay a financial remedy to acknowledge this and review its services to ensure people were routinely being asked or prompted about any reasonable adjustments.



Malik's story

Case reference: [19 015 787](#)

Malik was diagnosed with Alzheimer's disease while living in a care home, which listed dementia as one of its specialisms. Despite this, the care home served him with notice to end his placement as it said it could no longer deal with his challenging behaviour. The home said that Malik was not aggressive but showed "substantial resourcefulness" in leaving the premises.

Malik's daughter told the care home that Malik's consultant had recommended options for dealing with his behaviour. One option was for Malik to remain in the home and trial new medication with the home monitoring him for six weeks before reaching a decision on terminating the placement. The care home decided it was safer for Malik to be placed elsewhere than trial new medication.

Our investigation found the care provider at fault because there was no evidence it had considered making a reasonable adjustment for Malik by trialling the new medication. The

Competitions and Markets Authority's (CMA) guidance says no longer being able to safely meet a person's care needs is a legitimate reason for ending a placement. But it also says this should only be the case if a person's needs cannot be met after any reasonable adjustments have been made.

We found that the care provider had missed an opportunity to make reasonable adjustments recommended by Malik's consultant and this caused him and his daughter uncertainty about whether he could have remained in the care home.

How we put things right

The care provider agreed to our recommendations to pay Malik a financial remedy to acknowledge the uncertainty he suffered, and review its contract terms with reference to CMA guidance.

Failure to make requested reasonable adjustments

Where a person asks for reasonable adjustments to be made local services should put these in place unless the request is not considered reasonable. A person should not be required to provide evidence of their disability before reasonable adjustments are made.

In some cases people will not know what adjustments they require or what can be provided, so the service provider should be ready to discuss a range of possible options to meet their needs.



Sadie's story

Case reference: [19 004 621](#)

Sadie was unhappy with proposals in a planning application for a development next to her home. She wrote to the council to object to the application and asked to speak at the planning committee considering the application.

At the planning committee meeting Sadie asked for more time to speak and permission to distribute annotated copies of the proposed plans. She explained this was because she was dyslexic. The Chair of the planning committee refused to allow her to distribute the plans and said she could only speak for the standard time allowed.

The committee voted in favour of granting planning permission.

In response to Sadie's complaint the council accepted it should have made reasonable adjustments for Sadie in addition to identifying a number of other faults in the way the application was considered.

How we put things right

The council arranged for the planning committee to reconsider the application. Sadie was given more time to speak and was allowed to distribute her annotated plans. The council also agreed to pay Sadie a financial remedy to acknowledge the distress and time and trouble she was caused. Our investigation decided this was an appropriate remedy for the faults the council had accepted.



Ryan's story

Case reference: [18 001 442](#)

Ryan is dyslexic and struggles to understand written information. He received parking charge notices from the council. The notices did not provide any contact details for the council but said they could be challenged via the council's website.

Ryan wrote, with some difficulty, explaining he needed reasonable adjustments and would like to speak with someone about an appeal. The council continued to respond to Ryan in writing.

When the council did speak to Ryan it did not ask what reasonable adjustments he needed and it refused to allow him to make his appeal verbally.

Our investigation found the parking charge notices and the council's website only provided details of how to make an appeal in writing. Neither provided a contact telephone number. We said the council should have anticipated the needs of people who may need to access the service and should provide and publicise ways to request reasonable adjustments on its website and on its parking charge notices.

How we put things right

The council agreed to pay Ryan a financial remedy for the distress caused and we asked it to ensure he was given an opportunity to make his appeal verbally. The council cancelled Ryan's outstanding parking charge notices instead.

The council reacted positively and used our investigation to make service improvements. This included making amendments to the wording of its parking charge notices to provide a telephone number where people could request reasonable adjustments and applied our recommendations to services it shared with a neighbouring council.

The council also included the requirement to record information about reasonable adjustments in its draft specification for a new customer contact IT system.

Failure to make adjustments in a timely way

Where a person requests reasonable adjustments they should be provided in a timely way so long as the request is reasonable. This ensures the

adjustments are put in place and also prevents a person from being disadvantaged, particularly in appeal processes which may be time limited.



Matilda's story

Case reference: [19 014 516](#)

Matilda complained to us the council delayed in issuing a final Education, Health and Care (EHC) plan for her son. She said this was partly because it failed to make reasonable adjustments for her dyslexia.

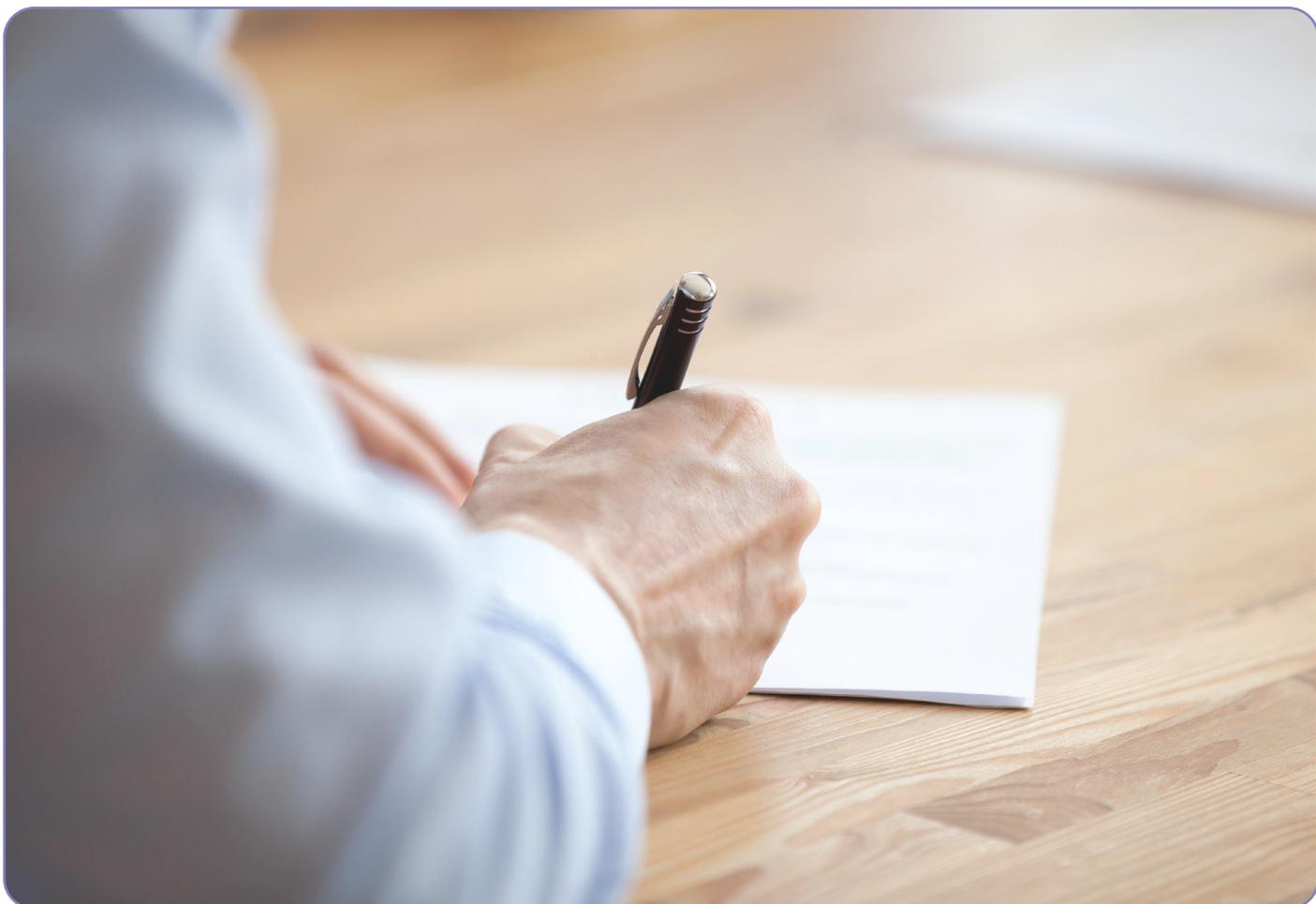
Matilda says she asked for various adjustments to be made because of her dyslexia and communication difficulties. This included reformatting documents, changing how and when documents would be sent, and altering the way the council allocated a key worker for Matilda.

Our investigation found the council at fault for not always making reasonable adjustments for Matilda's disabilities in a timely manner. This included not fixing problems with its software that prevented Matilda being able to access information, which it was already aware of.

The situation made Matilda's relationship with the council difficult. We found this could have been helped by telephone conversations. But instead there was a series of protracted correspondences which led to several meetings needing to be cancelled and rearranged. This added to the delays and frustration for Matilda.

How we put things right

The council agreed to apologise to Matilda for the delay and for not making reasonable adjustments in a timely manner. It also agreed to review its processes to ensure staff understand the importance of considering reasonable adjustments to meet its Equality Act duties and that agreed adjustments are properly recorded.



Maya's story

Case reference: [20 013 127](#)

Maya was responsible for acting on her mother's behalf, who was a resident in a care home.

Maya had asked the care provider several times for information about her mother's care fees. But the care provider delayed providing it, and this led to fees accumulating. The care provider said the delays were caused because Maya wanted to communicate by letter rather than email.

Our investigation said there was nothing in the care provider's terms and conditions that said communication must be by email. We also said the care provider should have procedures in place to communicate effectively, including corresponding by post if someone prefers this.

How we put things right

The care provider agreed to our recommendation to pay Maya a financial remedy to acknowledge the frustration and time and trouble she was caused. It also agreed to review how it handles postal correspondence to ensure it can keep track of letters it receives and can manage preferences or reasonable adjustments for postal communication.

Failure to ensure third parties acting on behalf of local services are considering Equality Act duties

Many councils have outsourced services to contractors or in some cases other neighbouring authorities. We say that contractors are acting on behalf of the council in these situations and we will hold the responsible council to account for any failures in the service.

It is therefore important that, when commissioning services, councils ensure contractors or others

acting on their behalf can meet their Equality Act duties, and they have robust policies and procedures in place for providing reasonable adjustments.

Councils should keep their contractors' compliance with this under review through contract management and complaints processes.



Sarah's story

Case reference: [19 014 201](#)

Sarah complained to the council when the contractor failed to collect her bins as agreed over a number of months. Sarah said that when bins were collected, they were often left in the wrong place blocking her wheelchair ramp.

Our investigation found the council had failed to keep accurate records of people who required assisted collections and did not monitor the service after promising Sarah it would.

Sarah told us that the council and its contractor had also failed to make reasonable adjustments for her autism related needs. Sarah said she found it difficult and stressful communicating with the council and contractors about her problems.

Sarah did not tell the council or its contractor about her need for reasonable adjustments. However, neither organisation had a policy or procedure for asking service users whether they needed any reasonable adjustments. We found this was fault. The duty is anticipatory and services should be proactive in providing people with the opportunity to explain any reasonable adjustments they might need.

How we put things right

The council agreed to our recommendations to pay a financial remedy to Sarah to acknowledge the distress she had been caused. The council also agreed to put reasonable adjustments in place to meet her autism related needs.

Imposing adjustments without considering individual needs

Local services should consult with service users about what reasonable adjustments they need. If a person requests an adjustment which is reasonable, the service cannot refuse to provide it. It cannot impose the service's own preferred adjustment instead.

Local services need to be alert to the individual needs of service users with disabilities and should not impose blanket policies of what reasonable adjustments it will agree to or make available.



David's story

Case reference: [21 000 797](#)

David complained the council did not make reasonable adjustments he requested when he contacted it to challenge a Penalty Charge Notice (PCN). David said the council's actions caused him distress and anxiety.

The council's Parking Enforcement Policy says, "The keeper of a vehicle may make a written challenge against the issue of a PCN". David called the council to challenge the PCN. He said he wanted to raise a verbal challenge as he had a disability and asked the council to make a reasonable adjustment in line with the Equality Act.

The council said it required challenges to be provided in writing and suggested David seek some assistance from friends or family. It gave this response three times during different calls with David.

Our investigation found the council had failed to make reasonable adjustments for David, despite having a process in place for this. The council failed to take account of its duties towards David under the Equality Act 2010, and this was fault.

How we put things right

The council agreed to remind staff of its duties under the Equality Act to consider providing reasonable adjustments for service users with disabilities, particularly in respect of accepting verbal challenges.

The council also agreed to review information on its website and any other literature regarding challenging PCNs to ensure it complies with the Equality Act and provides ways to request reasonable adjustments and communicate other than in writing.

Failure to record agreed adjustments

Once a local service agrees to make reasonable adjustments it should keep a record of these and provide them each time the service user accesses the relevant service.

Government guidance “Equality Act 2010: Summary Guidance on Services, Public Functions and Associations” says:

“Where a person has used the service provider’s services before, it will be unlawful to discriminate against them... if the actions of the service provider arise out of and are closely connected to the relationship that used to exist between them”.

This means that once a reasonable adjustment has been agreed it should be provided each time a person needs to access the relevant service.

We would not necessarily expect a large public body which delivers many different services to have a central record of reasonable adjustments agreed. Customer service systems and records for different service areas are not always centralised. However, where different service areas are communicating about the same service user they should also share details of any reasonable adjustments that have been agreed.



John’s story

Case reference: [20 005 942](#)

John complained to the council about a development near his home. John told the council he was dyslexic and preferred to communicate verbally to help him understand what was happening. The council agreed to this.

The council then began sending John email updates about action it was taking, leaving him feeling frustrated.

Our investigation said the council failed to keep a record of reasonable adjustments it had agreed to make for John.

How we put things right

The council agreed to pay John a financial remedy and remind officers to record any reasonable adjustments agreed with service users. The council also agreed to review its policies and procedures to ensure it was able to meet its obligations to people with disabilities.



Rosie's story

Case reference: [20 006 785](#)

Rosie complained the council failed to make reasonable adjustments when it communicated with her about her son's special educational needs.

The council agreed it would meet Rosie's needs by sending all documents on green paper as she was dyslexic. The council says it met that request.

However, soon after, the council emailed Rosie a copy of an assessment for her son as a word document. Being an electronic document, it was not on green paper.

Rosie felt the assessment was flawed. The way to challenge this was by an appeal to the SEND tribunal. Rosie said she had not been able to do

that because the council had not met her agreed communication needs when it corresponded with her.

Rosie provided our investigation with copies of correspondence with the council, which show the council was not consistently sending documents to her on green paper. We said this was fault because it became harder for Rosie to access the service and take a full role in her son's educational arrangements.

How we put things right

The council agreed to ensure any agreed reasonable adjustments are consistently made and it keeps adequate records.

Failure to review reasonable adjustments

Once a local service has agreed to make reasonable adjustments these should remain in place but also kept under review. Services will need to be aware that reasonable adjustments made in one area of the service may need to be provided when other services are being delivered.

Local services also need to be alert to changes in a service user's circumstances which may require changes to any reasonable adjustments that have been agreed.



Suki's story

Case reference: [20 006 932](#)

Suki complained to the council about the lack of support it had provided to her and her disabled daughter after she had applied for help. The council dealt with the complaint through its children's services statutory complaints process.

The council's stage 2 and stage 3 investigations found fault with the way the council had responded to Suki's needs and requests for reasonable adjustments. The stage 2 investigator suggested Suki be provided with an advocate, but none was provided.

The council also refused to change the date of a stage 3 panel when Suki explained she was unable to attend because of her medication affecting her. The panel was critical of the council and recommended Suki be referred to an advocacy service to be "supported in her future dealings with children's services and the All Age Disability Service".

Suki therefore thought she would have an advocate for all her future dealings with the council. However, the council said it would only fund the advocacy for the complaint process.

Our investigation found fault with the council's decision to restrict the advocacy services to the complaints process. We said the council had failed to demonstrate an understanding of Suki's needs and there was no evidence it had explored her wider need for reasonable adjustments.

How we put things right

The council agreed to pay Suki a financial remedy to acknowledge the distress caused by not referring her to advocacy services. It also agreed to review its policies and procedures to ensure it meets its duties to make reasonable adjustments. It would also provide autism awareness training for staff and review its commissioning of advocacy services.

Promoting good practice

While remedying individual injustice is an essential part of what we do, we also help councils, care providers and other public bodies tackle systemic failures and improve the way they deal with complaints.

In many cases we ask local services in our jurisdiction whether other people are currently, or could be, affected by the same issues raised in a complaint.

Drawing on our casework, we have identified some positive steps councils, care providers and other public bodies can take to improve services:

- > Review training needs of all public facing staff to ensure they are aware of duties under the Equality Act 2010.
- > Design policies and procedures with Equality Act duties in mind. This includes ensuring:
 - Members of the public are invited to provide details of any reasonable adjustments they might need every time a service is provided.
 - Reasonable adjustments are kept under review and proactively checked with service users.
 - There is a way to record reasonable adjustments which ensures continuity of service.
 - Information about reasonable adjustments is part of any information sharing agreements between internal and external services.
- > Incorporate Equality Act duties when commissioning services.
- > Ensure contractors or other parties acting on behalf of the local service meet duties under the Equality Act 2010 as part of any service reviews.
- > Retain alternative means of contact for the public when moving to automated or online only service delivery.
- > Place Equality Act duties at the heart of commissioning of any new IT systems relating to customer contact or delivery of services.

Local Scrutiny: Questions for Councillors

We want to share learning from our complaints with locally elected councillors, who have the democratic right to scrutinise the way councils carry out their functions and hold them to account.

Below we have suggested some key questions elected members could ask officers when scrutinising services in their authority:

- > How has the council considered its public sector equality duties when designing automated or online services? What other means of contact are available to the public and how is this publicised?
- > What training does the council provide to staff regarding the council's duties under the Equality Act 2010 and how regularly is this reviewed?
- > How does the council record reasonable adjustments and can it provide statistics on what proportion of people who use its services require reasonable adjustments?
- > How many complaints has the council had in the past year regarding disability discrimination or a failure to make reasonable adjustments?
- > Does the council have good information sharing agreements with other bodies and services which allow it to share information about reasonable adjustments to ensure continuity of service?
- > How does the council regularly review the range of reasonable adjustments it can provide to members of the public and is this information shared with public facing staff?

**Local Government and Social Care
Ombudsman**

PO Box 4771
Coventry
CV4 0EH

Phone: 0300 061 0614

Web: www.lgo.org.uk

Twitter: [@LGOmbudsman](https://twitter.com/LGOmbudsman)

Ribble Valley Borough Council Audit Progress Report and Sector Update

Year ending 31 March 2022

September 2022

Page 233



Contents

Section	Page
Introduction	3
Progress at September 2022	4
Audit Deliverables	6
Results of Interim Audit Work	7
Sector Update	9

The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit planning process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Council or all weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

Grant Thornton UK LLP is a limited liability partnership registered in England and Wales: No.OC307742. Registered office: 30 Finsbury Square, London, EC2A 1AG. A list of members is available from our registered office. Grant Thornton UK LLP is authorised and regulated by the Financial Conduct Authority. Grant Thornton UK LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

Introduction

Your key Grant Thornton team members are:

Georgia Jones

Key Audit Partner

T 0151 224 7200

E Georgia.S.Jones@uk.gt.com

Sophia Iqbal

Manager

T 0161 214 6372

E sophia.s.iqbal@uk.gt.com

Jobelle Bongato

Assistant Manager

E Jobelle.Bongato@uk.gt.com

This paper provides the Accounts and Audit Committee with a report on progress in delivering our responsibilities as your external auditors.

The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you as a local authority; and
- includes a number of challenge questions in respect of these emerging issues which the Committee may wish to consider (these are a tool to use, if helpful, rather than formal questions requiring responses for audit purposes)

Members of the Accounts and Audit Committee can find further useful material on our website, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications <https://www.grantthornton.co.uk/en/services/public-sector-services/>

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Engagement Manager.

Progress at September 2022

Financial Statements Audit

We undertook our initial planning for the 2021/22 audit in March and April 2022. We began our work on your draft financial statements in August and expect to complete this in November.

Our interim fieldwork included:

- Updating our review of the Authority's control environment
- Updating our understanding of financial systems
- Reviewing Internal Audit reports on core financial systems
- Understanding how the Authority makes material estimates for the financial statements

The results of our work to date are included in this report.

In June we issued a detailed audit plan, setting out our proposed approach to the audit of the Authority's 2021/22 financial statements.

We will report our work in the Audit Findings Report and aim to give our opinion on the Statement of Accounts by November 2022.

The Accounts and Audit Regulations 2015 were amended by SI 2021 No. 263. The Department for Levelling Up, Housing and Communities (DLUHC) previously stated their intention to introduce secondary legislation to extend the deadline for publishing audited local authority accounts to 30 November 2022 for the 2021/22 accounts. This is enacted by The Accounts and Audit (Amendment) Regulations 2022 (SI 2022 No. 708) that comes into force on 22 July 2022. The deadline for publishing audited local authority accounts for 2021/22 is extended to 30 November 2022 and thereafter changed to 30 September for years up to 2027/28.

Value for Money

The new Code of Audit Practice (the "Code") came into force on 1 April 2020 for audit years 2020/21 and onwards. The most significant change under the new Code was the introduction of an Auditor's Annual Report, containing a commentary on arrangements to secure value for money and any associated recommendations, if required.

The new approach is more complex, more involved and is planned to make more impact.

Under the 2020 Code of Audit Practice, for relevant authorities other than local NHS bodies auditors are required to issue our Auditor's Annual Report no later than 30 September or, where this is not possible, issue an audit letter setting out the reasons for delay.

As a result of the ongoing pandemic, and the impact it has had on both preparers and auditors of accounts to complete their work as quickly as would normally be expected, the National Audit Office has updated its guidance to auditors to allow us to postpone completion of our work on arrangements to secure value for money and focus our resources firstly on the delivery of our opinions on the financial statements. This is intended to help ensure as many as possible could be issued in line with national timetables and legislation. The extended deadline for the issue of the Auditor's Annual Report is now no more than three months after the date of the opinion on the financial statements. We anticipate issuing our Auditor's Annual Report in January 2023.

Progress at September 2022 (cont.)

Other areas

Certification of claims and returns

We certify the Authority's annual Housing Benefit Subsidy claim in accordance with procedures agreed with the Department for Work and Pensions (DwP). The certification work for the 2020/21 claim began in January 2022. DwP extended the deadline for reporting the findings of this work to 28 February 2022. We completed our work and reported to DwP on 10 February 2022. No issues were identified which required reporting to DwP.

Meetings

We met with Finance Officers in throughout the year as part of our liaison meetings and continue to be in discussions with finance staff regarding emerging developments and to ensure the audit process is smooth and effective. We also met with your Chief Executive in March to discuss the Council's strategic priorities and plans.

Events

We provide a range of workshops, along with network events for members and publications to support the Authority. Your officers attended our Accounts Workshop in January and February 2022, where we highlighted financial reporting requirements for local authority accounts and gave insight into elements of the audit approach.

Further details of the publications that may be of interest to the Council are set out in our Sector Update section of this report.

Audit Fees

During 2017, PSAA awarded contracts for audit for a five year period beginning on 1 April 2018. 2021/22 is the fourth year of that contract. Since that time, there have been a number of developments within the accounting and audit profession. Across all sectors and firms, the Financial Reporting Council (FRC) has set out its expectation of improved financial reporting from organisations and the need for auditors to demonstrate increased scepticism and challenge and to undertake additional and more robust testing.

Our work in the Local Government sector in the period 2018/19 to 2021/22 has highlighted areas where financial reporting, in particular, property, plant and equipment and pensions, needs to improve. There is also an increase in the complexity of Local Government financial transactions and financial reporting. This combined with the FRC requirement that all Local Government audits are at or above the "few improvements needed" (2A) rating means that additional audit work is required.

We have reviewed the impact of these changes on both the cost and timing of audits. We have discussed this with your s151 Officer including any proposed variations to the Scale Fee set by PSAA Limited, and have communicated fully with the Audit Committee.

As a firm, we are absolutely committed to meeting the expectations of the FRC with regard to audit quality and local government financial reporting.

Audit Deliverables

2021/22 Deliverables	Planned Date	Status
<p>Audit Plan</p> <p>We are required to issue a detailed audit plan to the Accounts and Audit Committee setting out our proposed approach in order to give an opinion on the Council's 2021/22 financial statements and to report on the Authority's value for money arrangements in the Auditor's Annual Report</p>	June 2022	Completed
<p>Interim Audit Findings</p> <p>We will report to you the findings from our interim audit and our initial value for money risk assessment within our Progress Report.</p>	September 2022	Completed
<p>Audit Findings Report</p> <p>The Audit Findings Report will be reported to the November Audit Committee.</p>	November 2022	Not yet due
<p>Auditors Report</p> <p>This includes the opinion on your financial statements.</p>	November 2022	Not yet due
<p>Auditor's Annual Report</p> <p>This report communicates the key outputs of the audit, including our commentary on the Authority's value for money arrangements.</p>	December 2022	Not yet due
2021/22 Audit-related Deliverables	Planned Date	Status
<p>Housing Benefit Subsidy – certification</p> <p>This is the report we submit to Department of Work and Pensions based upon the mandated agreed upon procedures we are required to perform.</p>	January 2023	Not yet due

Results of Interim Audit Work

The findings of our interim audit work, and the impact of our findings on the accounts audit approach, are summarised in the table below:

	Work performed	Conclusions and recommendations
Internal audit	We have reviewed internal audit's work on the Council's key financial systems to date. We have not identified any significant weaknesses impacting on our responsibilities.	Our review of internal audit work has not identified any weaknesses which impact on our audit approach.
Entity level controls	<p>We have obtained an understanding of the overall control environment relevant to the preparation of the financial statements including:</p> <ul style="list-style-type: none"> • Communication and enforcement of integrity and ethical values • Commitment to competence • Participation by those charged with governance • Management's philosophy and operating style • Organisational structure • Assignment of authority and responsibility • Human resource policies and practices 	Our work has identified no material weaknesses which are likely to adversely impact on the Council's financial statements.
Review of information technology controls	<p>We performed a high level review of the general IT control environment, as part of the overall review of the internal controls system.</p> <p>IT (information technology) controls were observed to have been implemented in accordance with our documented understanding.</p>	Our work has identified no material weaknesses which are likely to adversely impact on the Council's financial statements.

	Work performed	Conclusions and recommendations
Walkthrough testing	<p>We have completed walkthrough tests of the Council's controls operating in areas where we consider that there is a significant risk of material misstatement to the financial statements.</p> <p>Our work has not identified any issues which we wish to bring to your attention. Internal controls have been implemented by the Council in accordance with our documented understanding.</p>	Our work has not identified any weaknesses which impact on our audit approach.
Journal entry controls	We have reviewed the Council's journal entry policies and procedures as part of determining our journal entry testing strategy and have not identified any material weaknesses which are likely to adversely impact on the Council's control environment or financial statements.	Our work has not identified any weaknesses which impact on our audit approach.

Sector Update

Authorities continue to try to achieve greater efficiency in the delivery of public services, whilst facing the challenges to address rising demand, ongoing budget pressures and social inequality.

Our sector update provides you with an up to date summary of emerging national issues and developments to support you. We cover areas which may have an impact on your organisation, the wider local government sector and the public sector as a whole. Links are provided to the detailed report/briefing to allow you to delve further and find out more.

Our public sector team at Grant Thornton also undertake research on service and technical issues. We will bring you the latest research publications in this update. We also include areas of potential interest to start conversations within the organisation and with audit committee members, as well as any accounting and regulatory updates.

- [Grant Thornton Publications](#)
- [Insights from local government sector specialists](#)
- [Reports of interest](#)
- [Accounting and regulatory updates](#)

More information can be found on our dedicated public sector and local government sections on the Grant Thornton website by clicking on the logos below:

Public Sector

Local
government

Response to local audit consultation – Department for Levelling Up, Housing and Communities (“DLUHC”)

The Department for Levelling Up, Housing and Communities (“DLUHC”) has published its response to the local audit consultation. This follows the “Redmond Review”, which reported in September 2020.

The response confirms plans to establish a new regulator, the Audit Reporting and Governance Authority (ARGA), as the system leader for local audit within a new, simplified local audit framework.

Ahead of ARGA’s establishment, a shadow system leader arrangement will start at the Financial Reporting Council (FRC) from September 2022.

The consultation response also announces:

- Plans to make audit committees compulsory for all councils, with each audit committee required to include at least one independent member. This will create greater transparency and consistency across local bodies.
- ARGA will take over statutory responsibility for preparing and issuing the Code of Audit Practice (from the National Audit Office).
- A post-implementation review of the new Value for Money arrangements. The Code is a key part of the local audit system, and it is important to ensure that it helps to facilitate effective local audit. To allow time for the new arrangements to bed in the response proposes this is completed within three years.

The full response can be found here:

[Government response to local audit framework: technical consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/government-response-to-local-audit-framework-technical-consultation)



Levelling up White Paper – Department for Levelling Up, Housing and Communities (“DLUHC”)

On 2 February the Department for Levelling Up, Housing and Communities (“DLUHC”) published its Levelling Up White Paper.

The paper states “Levelling up requires a focused, long-term plan of action and a clear framework to identify and act upon the drivers of spatial disparity. Evidence from a range of disciplines tells us these drivers can be encapsulated in six “capitals”:

Page 243

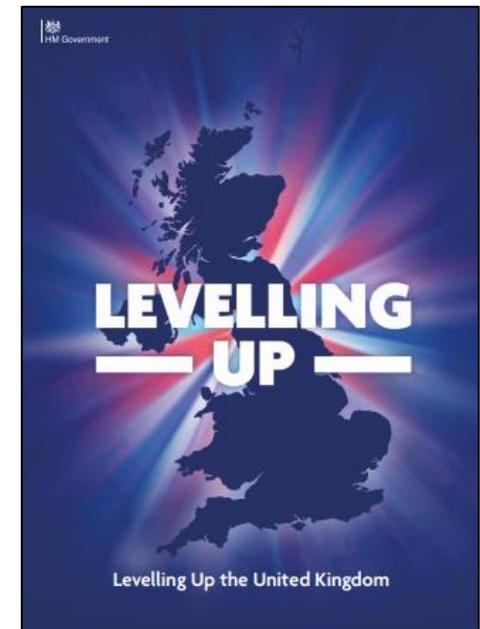
- Physical capital – infrastructure, machines and housing.
- Human capital – the skills, health and experience of the workforce.
- Intangible capital – innovation, ideas and patents.
- Financial capital – resources supporting the financing of companies.
- Social capital – the strength of communities, relationships and trust.
- Institutional capital – local leadership, capacity and capability.”

The paper also states “This new policy regime is based on five mutually reinforcing pillars.” These are set out and explained as:

- 1) The UK Government is setting clear and ambitious medium-term missions to provide consistency and clarity over levelling up policy objectives.
- 2) Central government decision-making will be fundamentally reoriented to align policies with the levelling up agenda and hardwire spatial considerations across Whitehall.

- 3) The UK Government will empower decision-makers in local areas by providing leaders and businesses with the tools they need.
- 4) The UK Government will transform its approach to data and evaluation to improve local decision-making.
- 5) The UK Government will create a new regime to oversee its levelling up missions, establishing a statutory duty to publish an annual report analysing progress and a new external Levelling Up Advisory Council.

[Levelling Up the United Kingdom - GOV.UK](https://www.gov.uk/levelling-up)
(www.gov.uk)



Grant Thornton – reaction to Levelling up White Paper

On 2 February the Department for Levelling Up, Housing and Communities (“DLUHC”) published its Levelling Up White Paper.

Commenting on the release of the government’s Levelling up White Paper plans, Phil Woolley, Head of Public Sector Consulting, Grant Thornton UK LLP, said:

“The publication of today’s White Paper plans is a welcome first step and it is reassuring to see the government recognise the need for systemic changes in order to deliver its central aim of Levelling up. The ‘12 missions’ can be seen as an attempt to consolidate existing elements of government activity behind a singular banner and now provides a clearer picture of the levelling up opportunity.

“Following a decade of successful regional devolution and mayors, the White Paper marks the next stage of the country’s devolution journey. With government now offering a clear framework of devolved powers and accountability, local leaders will need to embrace the opportunity and collaborate across the public and private sector to ensure they negotiate and then deliver the best deal for their communities. Grant Thornton’s Levelling Up Index shows that the economies of the 10 worst performing local authorities in England are on average over five times smaller than their best performing counterparts - highlighting the scale of the challenge ahead.

“To level up, these areas would need to grow their economies by £12billion, increase employment rates by 6 percentage points, create 1,700 new businesses a year and increase average weekly pay by £200. It is too early to determine whether the measures announced today will be sufficient, but it is a start. Success will ultimately depend on the ability and willingness of local and national government to translate these new frameworks into meaningful change in people’s lives.

“The Spending Review offers the next opportunity for government to show its commitment by realigning departmental objectives behind these new goals.”

Prudential Code and Treasury Management Code – CIPFA

On 20 December CIPFA published the new Prudential Code for Capital Finance in Local Authorities (Prudential Code) and Treasury Management in the Public Services Code of Practice and Cross-Sectoral Guidance Notes (the Treasury Management Code).

CIPFA commented “These two statutory and professional codes are important regulatory elements of the capital finance framework in which local authorities operate. Local authorities are required by regulation to have regard to’ their provisions. These two codes have been published a principles-based consultation from February to April, which was followed by a second consultation on the detailed changes to the code from September to mid-November.

The updated Prudential Code includes some substantive changes. Most notably, the provisions in Code which present the approach to borrowing in advance of need in order to profit from additional sums borrowed have been strengthened. Additionally, the relevant parts of Code have augmented to be clear that borrowing for debt-for-yield investment is not permissible under the Prudential Code. This recognises that commercial activity is part of regeneration but underlines that such transactions do not include debt-for-yield as the primary purpose of the investment or represent an unnecessary risk to public funds.”

The updated Prudential Code removes the "advance of need" terminology and emphasises the legislative basis for borrowing, namely that a local authority can borrow and invest for any legislative function and/or for the prudent management of their financial affairs.

The examples listed in the Code of legitimate prudential borrowing are:

- Financing capital expenditure primarily related to the delivery of a local authority’s functions;
- Temporary management of cash flow within the context of a balanced budget;
- Securing affordability by removing exposure to future interest rate rises; or
- Refinancing current borrowing, including replacing internal borrowing, to manage risk or reflect changing cash flow circumstances.



The Value of Internal Audit – CIPFA

One of the key elements of good governance is an independent and objective internal audit service. Some organisations engage fully and reap significant benefits from the assurance, insight and expertise they bring whilst others pay lip-service to them and see their work as an administrative burden.

CIPFA's recent report, Internal Audit: Untapped Potential, lifts the lid on internal audit in public services. For some chief financial officers and chief executives, this report confirms the value and contribution of internal audit teams with 87% of respondents recognising the contribution internal audit makes to their organisation. However, some leadership teams saw internal audit as providing a basic service at minimal cost.

Getting the most out of the function requires honest conversations and long-term planning. Maintaining appropriate skills and knowledge within the function is necessary to ensure high quality internal audit in public services are retained.

Culture and governance

The Audit Committee should monitor the delivery of internal audit and their output will be a key part of the annual work-plan. However, internal audit is not a substitute for risk management and should enhance the overall assurances received by management. Executives and Officers should engage with internal audit recommendations to ensure the organisation gains maximum value from reviews.

Capacity

Reducing internal audit days can lead to a lack of 'corporate grip' and not identifying issues at an early stage. This report raises concerns over the capacity of internal audit across the public sector. The profession needs to be valued and invested in to make it more attractive to new blood and for bodies to be able to attract the best candidates to their service.

Expectations

To maximise the impact of internal audit, a clear and aligned strategic audit plan and annual audit plan should be in place. This should be agreed with all stakeholders.

Future plans

Internal audit needs to adapt to the changing landscape, including risks such as climate change, digital and technological developments, cyber-security and ongoing financial and service pressures within their planning processes. For financial resilience and medium- and long-term financial strategies internal audit can provide vital independent assurance to decision makers to allow them to take on more risk and be more ambitious. Leadership teams need to be clear on what assurances they will require going forward.

For more information, [Rob Whiteman](#) share his views on this report.



Good practice in annual reporting – NAO

The National Audit Office (NAO) has published this guide which sets out good practice principles for annual reporting with examples from public sector organisations

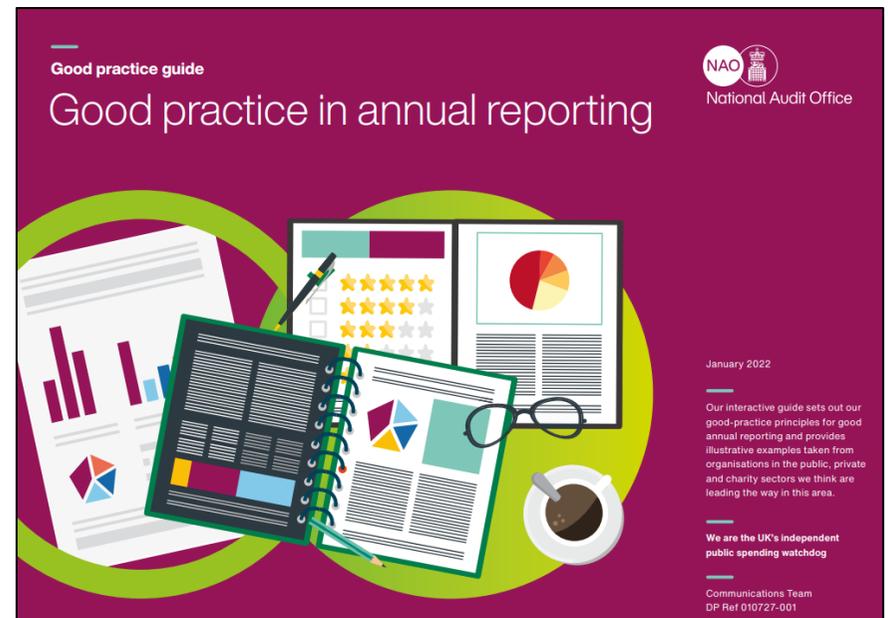
The NAO comment that the guide sets out “good-practice principles that we believe underpin good annual reporting. These principles are: Supporting Accountability; Transparency; Accessibility; and the need for the report to be Understandable.”

The NAO further comment “The best annual reports we have seen use these principles to tell the “story” of the organisation. It is important that stakeholders, including the public and Parliament, are able to hold an organisation to account. To do this effectively, stakeholders need to properly understand the organisation’s strategy, key risks that might get in the way of delivering this strategy and the effectiveness of their management, and the amount of taxpayers’ money that has been spent to deliver the outcomes the organisation seeks to achieve.”

The guide draws on examples of good practice from within each of the six sections of an Annual Report:

- Strategy
- Risk
- Operations
- Governance
- Measures of success
- Financial performance
- External factors

Although the guide does not include any local authority examples, those included, and the underlying principles, are equally relevant to all public facing organisations.



The guide can be found here:

[Good practice in annual reporting - National Audit Office \[NAO\] Report](#)

Audit and Risk Assurance Committee effectiveness tool – NAO

The National Audit Office (NAO) has published this tool which supports Audit Committees in assessing their effectiveness.

The NAO comment “Audit and Risk Assurance Committees (ARACs) play a crucial role in supporting the effective governance of central government departments, their agencies and arm’s-length bodies.

ARACs are operating in a highly challenging context. Government organisations are managing many short- and long-term risks and are required to be resilient to a number of pressures. This has created an environment where ARACs need to be dynamic and responsive to the changing risk profiles and demands of their organisations. ARACs can see this as an opportunity to work out how they can most proactively work with the Board and accounting officer.

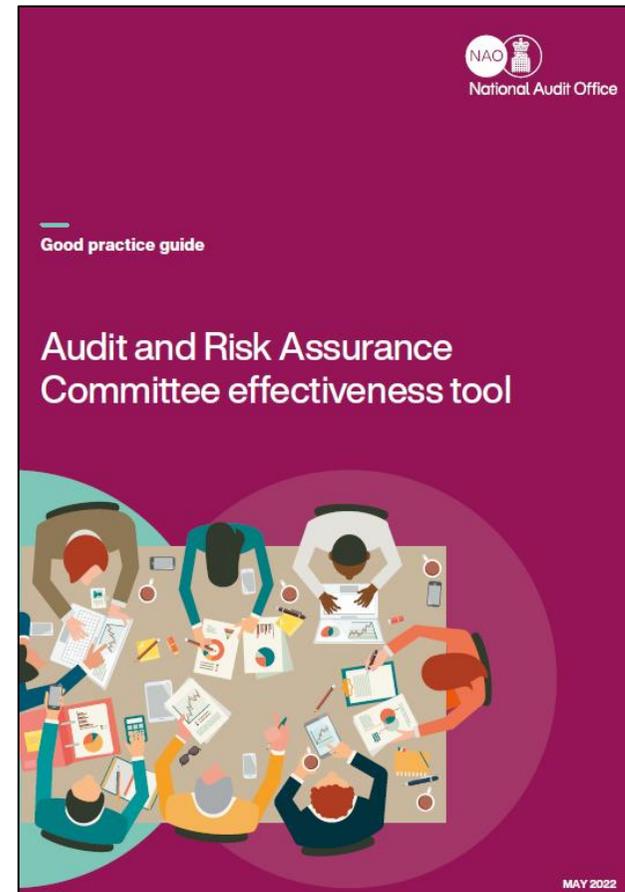
Against this background, the NAO’s effectiveness tool provides a way for ARACs to assess their effectiveness against more than just the basic requirements. It provides aspects of good practice to give ARACs greater confidence and the opportunity to meet the requirements of their role.

The NAO’s effectiveness tool is a comprehensive way for ARACs to assess their effectiveness on a regular basis.”

The tool covers:

- Membership, independence, objectivity and understanding
- Skills and experience
- Roles and responsibilities
- Scope
- Communication and reporting

Although the tool is designed for central government Audit Committees it is also relevant to local government.



The guide can be found here:

[Audit and Risk Assurance Committee effectiveness tool - National Audit Office \(NAO\) Report](#)

Guide for audit and risk committees on financial reporting and management during COVID-19 – NAO

The National Audit Office (NAO) has published this guide which aims to help audit and risk committee members discharge their responsibilities in several different areas, and to examine the impacts on their organisations of the COVID-19 outbreak

The NAO comment “Audit and risk committees are integral to the scrutiny and challenge process. They advise boards and accounting officers on matters of financial accountability, assurance and governance, and can support organisations, providing expert challenge, helping organisations focus on what is important, and how best to manage risk.

Each organisation will have existing risk management processes in place, but risk appetite may have changed as a result of COVID-19, for the organisation to operate effectively and respond in a timely manner. This may result in a weakening of controls in some areas, increasing the likelihood of other risks occurring. Organisations will need to consider how long this change in risk appetite is sustainable for.”

The guide includes sections on:

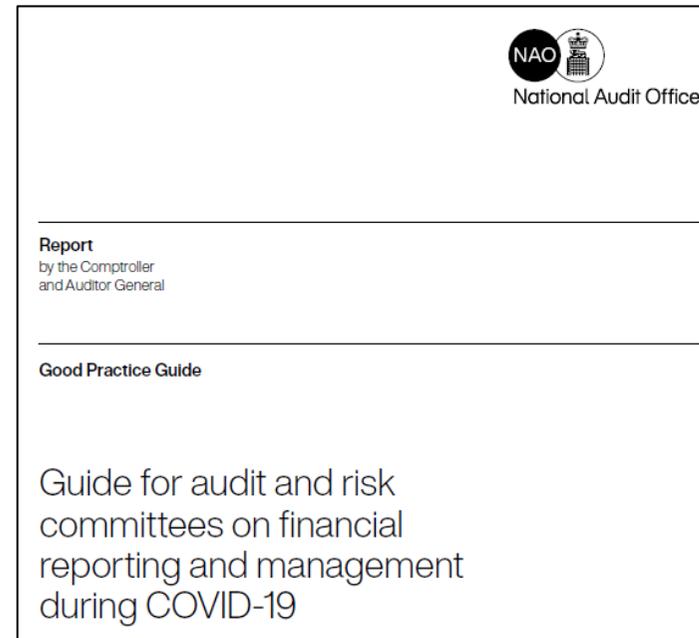
- Annual reports
- Financial reporting
- The control environment
- Regularity of expenditure

The guide can be found here:

<https://www.nao.org.uk/report/guidance-for-audit-and-risk-committees-on-financial-reporting-and-management-during-covid-19/>

The guide includes a number of key questions covering areas such as:

- Property valuations
- Pension scheme valuations
- Completeness of liabilities
- Events after the reporting period
- Control environment
- Fraud and error



RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

meeting date: 28 SEPTEMBER 2022
 title: COUNTER FRAUD, BRIBERY AND CORRUPTION POLICY STATEMENT AND STRATEGY
 submitted by: DIRECTOR OF RESOURCES
 principal author: LAWSON ODDIE

1 PURPOSE

- 1.1 To inform Members of the recently fully reviewed and revised Counter Fraud, Bribery and Corruption Policy Statement and Strategy.
- 1.2 Relevance to the Council's ambitions and priorities:
 - This report contributes to the council's ambition to be a well-managed council providing efficient services based on identified customer needs.

2 BACKGROUND

2.1 One of the Core Functions of Accounts and Audit Committee is to:

Monitor the effectiveness of the system of internal control, including arrangements for financial management, ensuring value for money, supporting standards and ethics and managing the authority's exposure to the risks of fraud and corruption.

- 2.2 At the meeting of Policy and Finance committee on 27 September the new Counter Fraud, Bribery and Corruption Policy Statement and Strategy will be considered for approval.
- 2.3 The Council currently has an Anti-Fraud and Corruption Policy in place, albeit quite some time since it was last reviewed. The new Counter Fraud, Bribery and Corruption Policy Statement and Strategy sets out the systems and procedures the council has in place to manage the risk of fraud, bribery and corruption and has been fully rewritten when compared to the old policy.
- 2.4 It is concerned with both operational activities to detect and investigate fraud, bribery and corruption and also proactive deterrence and prevention of fraud, bribery and corruption through the development of a counter fraud, bribery and corruption culture.
- 2.5 The policy supports a wide range of other policies and procedures that aim to counter fraud, bribery and corruption.

3 ACCOUNTS AND AUDIT COMMITTEE AND THE NEW POLICY

- 3.1 In order to help this committee to properly undertake its responsibilities it is important that members familiarise themselves with the contents of the new policy document.
- 3.2 Should there be any amendments made and approved at Policy and Finance committee which change the copy of the draft policy attached at Annex 1, then this committee will be updated at their meeting.

4 CONCLUSION

- 4.1 A new Counter Fraud, Bribery and Corruption Policy Statement and Strategy is due to be approved by Policy and Finance Committee on 27 September, to replace the existing Anti-Fraud and Corruption Policy.
- 4.2 Included within one of the Core Functions of Accounts and Audit Committee is '*...managing the authority's exposure to the risks of fraud and corruption*'.
- 4.3 As such, it is important that committee members familiarise themselves with the contents of the new policy document.
- 4.4 Should any amendments to the draft policy be proposed and approved by Policy and Finance Committee at their meeting on 27 September, then this committee will be updated at their meeting.

HEAD OF FINANCIAL SERVICES

DIRECTOR OF RESOURCES

PF17-22/LO/AC

15 September 2022

BACKGROUND WORKING PAPERS:

For further information please ask for Lawson Oddie, extension 4541



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

COUNTER FRAUD, BRIBERY AND CORRUPTION POLICY STATEMENT AND STRATEGY

SEPTEMBER 2022

COUNTER FRAUD, BRIBERY AND CORRUPTION POLICY STATEMENT

The council is committed to adopting a zero-tolerance approach to fraud, bribery and corruption from both internal and external sources. It is committed to acting professionally, fairly and with integrity and to implementing and enforcing effective systems to counter fraud, bribery and corruption.

The overall objective is to limit the council's exposure to fraud, bribery and corruption, and to minimise financial loss and the potential adverse effects on its reputation in the event of this occurrence by:

- creating a counter fraud culture;
- understanding the fraud risks facing the council;
- implementing measures to deter, prevent and detect fraud;
- promptly and professionally investigating alleged or detected fraud; and
- imposing appropriate sanctions and redress where fraud, bribery or corruption are proven.

All members, employees, suppliers and contractors of the council should ensure the highest standards of stewardship of public funds. The detection, prevention and reporting of fraud, bribery and corruption is the responsibility of all members and employees of the council and also of our suppliers and contractors. The council aims to fight fraud, bribery and corruption by encouraging prevention whilst also promoting detection.

It is important to note that fraud may be committed both from within the council and externally. Fraud may be complex or simple; opportunistic, pre-planned or continuous. Unlike fraud, bribery and corruption usually require the involvement of a council member or employee.

COUNTER FRAUD, BRIBERY AND CORRUPTION STRATEGY

1. INTRODUCTION

- 1.1. This counter fraud, bribery and corruption strategy sets out the systems and procedures the council has in place to manage the risk of fraud, bribery and corruption. It is concerned with both operational activity to detect and investigate fraud, bribery and corruption and also proactive deterrence and prevention of fraud, bribery and corruption through the development of a counter fraud, bribery and corruption culture.
- 1.2. The council has a range of policies and procedures which aim to counter fraud, bribery and corruption. These include:
- Members' Code of Conduct
 - Code of Conduct for Staff
 - Financial Regulations
 - Contract Procedure Rules
 - Whistleblowing Policy
 - Register of Gifts and Hospitality
 - Protocol for Member/Officer Relations
 - Disciplinary Procedure
 - Recruitment and Selection Procedure
 - Anti-Money Laundering Policy
 - Internet and Email Acceptable Use Policy
 - Register of Interests
 - Complaints Procedure
- 1.3. Although this document specifically refers to fraud, bribery and corruption, it equally applies to any forms of malpractice by individuals that could reduce public confidence in the council and its services and may also include acts committed outside official duties but which impact upon the council's trust in the individual concerned. Examples include:
- theft of property, including assets and cash;
 - false accounting;
 - obtaining by deception;
 - pecuniary advantage by deception; and
 - computer abuse and computer crime.

Fraud

- 1.4. The Chartered Institute of Public Finance and Accountancy (CIPFA) defines fraud as
- "the intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain."

1.5. The Fraud Act 2006 defines fraud in law in three classes:

- fraud by false representation;
- fraud by failing to disclose information; and
- fraud by abuse of position.

Bribery

1.6. CIPFA defines bribery as

“an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage”.

1.7. The Bribery Act 2010 contains the following four categories of offence and, whilst it was updated in May 2013, these categories of offence remained unchanged:

- offering, promising or giving a bribe to another person;
- requesting, agreeing to receive or accepting a bribe from another person;
- bribing a foreign public official; and
- a corporate offence of failing to prevent bribery.

Corruption

1.8. CIPFA defines corruption as:

"the offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person."

1.9. The Serious Fraud Office provides a number of indicators of corruption, including:

- private meetings with public contractors or companies hoping to tender for contracts;
- making unexpected or illogical decisions accepting projects or contracts;
- abuse of the decision process or delegated powers; and
- agreeing contracts not favourable to the organisation.

2. CREATING AND MAINTAINING A STRONG COUNTER FRAUD CULTURE

2.1. The council aims to foster honesty and integrity, and to uphold the Seven Principles of Public Life developed by the Nolan Committee on Standards in Public Life and set out in Annex 1. High ethical standards are an integral part of good governance. In promoting good governance the council aims to create a counter fraud culture to help deter people from committing fraud and to encourage those who suspect fraudulent activity to report it.

2.2. Elected members are informed of the council's governance standards following their election and as part of their declaration of acceptance of office. Elected members must also sign an undertaking to comply with the Members' Code of Conduct before they act as members and must register their financial and other interests with the Monitoring Officer within 28 days of taking office. It is the duty of individual members to notify the Monitoring Officer of any changes to their original declaration.

Ribble Valley Borough Council

Counter Fraud, Bribery and Corruption Policy Statement and Strategy

- 2.3. New employees receive induction training covering the Code of Conduct for Staff which details the council's expectations of them. The Code also refers to standards that employees are expected to demonstrate. Any breach of good conduct will be dealt with under the council's disciplinary procedures and may result in dismissal. Additionally, all staff are required to complete a 'Declaration of Interests' form on an annual basis.
- 2.4. Equally, members of the public, clients and external organisations such as suppliers and contractors are expected to act with integrity in any dealings they may have with the council.
- 2.5. Members and officers are positively encouraged and expected to raise any concerns that they may have on these issues where they are associated with the council's activity. The council has a Whistleblowing Policy which is regularly reviewed to ensure it provides a safe environment where concerns can be raised in confidence, and provides guidance on how to do so.
- 2.6. Staff in Financial Services are periodically required to complete e-learning to increase counter fraud awareness and receive regular reminders about their responsibilities and fraud alerts as appropriate.

3. DETERRENCE

- 3.1. The council values its reputation for financial probity and reliability. It recognises that over and above any financial damage suffered, fraud, bribery and corruption may also reflect adversely on its reputation. The council's aim therefore, is to limit its exposure to fraud, bribery and corruption by:
 - developing and maintaining cost effective measures and procedures to deter fraud, bribery and corruption;
 - taking firm and vigorous action against any individual or group perpetrating fraud, bribery or corruption against the council;
 - encouraging members and employees to be vigilant and to report any suspicion of fraud, bribery or corruption, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
 - rigorously investigating instances of alleged fraud, bribery or corruption and pursuing perpetrators to seek restitution of any asset fraudulently obtained together with the recovery of costs; and
 - assisting the police and any other appropriate authorities in the investigation and prosecution of those suspected of fraud, bribery or corruption.

4. PREVENTION

- 4.1. Managers and staff throughout the council are responsible for designing, maintaining and operating systems and processes which minimise the opportunity for fraud, bribery and corruption.
- 4.2. The following internal control measures are in place to assist with the prevention of fraud:
 - The Monitoring Officer (Head of Legal and Democratic Services) has a duty to report to the council where it appears to them that any proposal, decision or omission by the council, a committee, a sub-committee or officer has given rise to, (or is likely to give rise to), a contravention of any enactment, rule of law or statutory code of practice.

Ribble Valley Borough Council Counter Fraud, Bribery and Corruption Policy Statement and Strategy

- The Section 151 officer (Director of Resources) has a statutory responsibility under the Local Government Act 1972 to ensure the proper administration of the council's financial affairs.
- The Accounts and Audit Regulations 2015, require the council to maintain a sound system of internal control and the council has delegated this responsibility to the Director of Resources.
- Heads of Service ensure that internal controls, including those in a computerised environment are adequately designed and effectively operated.
- The Internal Audit team reviews the adequacy of the council's internal controls including those to prevent fraud, and supports the council's participation in the National Fraud Initiative (a data matching exercise) that identifies indications of potential fraud.

5. DETECTION

5.1. Whilst having regard to the requirements of the Data Protection Act (2018) and the General Data Protection Regulation (GDPR) 2018, the council actively participates in an exchange of information with external agencies on fraud, bribery and corruption activity in relation to public bodies. These include:

- Lancashire Constabulary and other police forces;
- Lancashire Chief Financial Officers' Group;
- The council's external auditor;
- National Anti-Fraud Network;
- The National Fraud Initiative;
- Other local authorities; and
- The Department for Work and Pensions and other government departments.

5.2. It is the responsibility of all the council's management to prevent and detect fraud, corruption and bribery. In addition, Internal Audit and External Audit will liaise closely and implement an annual programme of audits that will test for fraud and corruption. However, despite the best efforts of managers and auditors, many frauds are discovered by chance or "tip off". It is often the alertness of employees and the public that enables detection to occur.

6. INVESTIGATION

6.1. The council's internal control systems are designed to deter fraud, but, such activity may nevertheless occur. The Financial Regulations require that Directors, Heads of Service and other staff immediately notify the internal audit team, on behalf of the Director of Resources upon discovery or suspicion of any financial irregularity, whether affecting cash, stores, property, financial records or otherwise and that the Director of Resources will notify the Chief Executive in all significant cases.

6.2. Reporting of suspected irregularities is essential as it facilitates proper investigation and ensures the consistent treatment of information regarding fraud, bribery and corruption.

6.3. The designated investigating officer will:

- deal promptly with the matter;
- record the evidence found and ensure its security and confidentiality;

Ribble Valley Borough Council

Counter Fraud, Bribery and Corruption Policy Statement and Strategy

- work closely with senior managers of the service concerned and any other agencies, such as the Police to ensure that all issues are properly investigated and reported upon;
 - ensure that funds are recovered as far as possible for the council;
 - where appropriate arrange for the Council's insurers to be informed and for any necessary claims to be made; and
 - implement disciplinary procedures where appropriate.
- 6.4. Depending on the nature and extent of the allegations the investigating officer will work closely with the corporate management team, legal and human resources teams and external organisations such as the police as necessary to ensure that all allegations are properly investigated.
- 6.5. Senior management are responsible for following up any allegation of fraud, corruption or bribery that they receive and are required to inform the Internal Audit team of all suspected irregularities, irrespective of whether they are ultimately proven. Internal Audit must be informed to ensure that procedures and controls can be re-assessed to ensure further similar irregularities should not arise.
7. APPROPRIATE SANCTIONS AND REDRESS AGAINST FRAUDULENT ACTIONS
- 7.1. The council deals firmly with any financial impropriety, irrespective of whether this is committed by members, officers or external individuals or organisations, and refers such matters to the police for advice and investigation where appropriate. The Crown Prosecution Service (CPS) would determine whether or not a prosecution would be pursued. Referral to the police and any subsequent decision by CPS around prosecution will not prohibit or restrict disciplinary action.
- 7.2. Wherever possible the council seeks to recover all proven financial losses through court action or by invoicing an individual but it is not always possible to recover the full value of the loss. The council will exercise its discretion to seek to recover any money owing as a result of a former employee's grave misconduct, or criminal, negligent or fraudulent acts or omissions from the employee's pension benefits if the employee is a member of the Local Government Pension Scheme.
- 7.3. Where possible, recovery will be sought under Regulation 93 of the Local Government Pension Scheme Regulations 2013 (or the corresponding equivalent regulation in earlier legislation) but, where that is not possible, would take an unreasonable length of time or incur a disproportionate cost, and recovery under Regulation 91 of the Local Government Pension Scheme Regulations 2013 (or the corresponding equivalent regulation in earlier legislation) is possible, then this will be pursued instead.
- 7.4. The council's Human Resources team will provide advice for managers who receive requests for references for employees who are dismissed as a result of a disciplinary investigation or who resign during a disciplinary investigation.

Ribble Valley Borough Council Counter Fraud, Bribery and Corruption Policy Statement and Strategy

8. KEEPING MANAGEMENT AND ELECTED MEMBERS INFORMED

- 8.1. At all stages described within this policy, the Council's Corporate Management Team will be kept informed. Other suitable reporting arrangements would be put in place should this present any form of conflict of interests.
- 8.2. Furthermore, regular information would be provided to the Accounts and Audit Committee through their cycle of meetings, again to keep them informed and to assist in the fulfilment of their role in respect of governance arrangements and oversight of such matters.

9. RAISING CONCERNS

- 9.1. Although the Policy specifically refers to fraud, corruption and bribery, it equally applies to all financial malpractice. Fraud and corruption includes a wide range of irregularities and criminal acts that are financial or finance related. It includes for example:
- Theft of property, including assets and cash
 - False accounting
 - Obtaining property by deception
 - Pecuniary advantage by deception
 - Computer abuse and computer crime
 - Bribery and corruption
- 9.2. Officers and Members can be exposed to a number of pressures from contractors, landlords, the public to act in a particular way in a particular case. This may involve pressure to show "favouritism" regarding access to all kinds of services and benefits (e.g. grants, benefits, gaining contracts, planning permission etc).
- 9.3. Members and Officers are an important element in the Council's stance on fraud, corruption and bribery, and they are positively encouraged and expected to raise any concerns that they may have on these issues where they are associated with the Council's activity.
- 9.4. Officers should normally raise concerns through their immediate manager, however it is recognised that they might feel inhibited in certain circumstances. In this case, officers should contact:

Head of Legal and Democratic Services (Monitoring Officer)

Ribble Valley Borough Council, Council Offices, Church Walk, Clitheroe, BB7 2RA

Email: whistleblowing@ribblevalley.gov.uk

Telephone: 01200 425111 (*Please ask for the Head of Legal and Democratic Services*)

THE SEVEN PRINCIPLES OF PUBLIC LIFE

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

meeting date: 28 SEPTEMBER 2022
title: INTERNAL AUDIT PROGRESS REPORT – SEPTEMBER 2022
submitted by: DIRECTOR OF RESOURCES
principal author: INTERNAL AUDIT MANAGER

1 PURPOSE

1.1 The purpose of this report is to provide an update to the Accounts and Audit Committee in respect of progress made in delivery against 2022/23 Internal Audit Plan. It brings to your attention, matters relevant as members of the Committee and provides a summary of internal audit activity which is a requirement of the Public Sector Internal Audit Standards (PSIAS).

1.2 Detailed reports and relevant findings, recommendations and agreed actions have been provided to lead officers within the Council and are available to committee members upon request. This report covers the period June 2022 to August 2022.

1.3 Relevance to the Council's ambitions and priorities:

Corporate priorities – the Council seeks to maintain critical financial management and controls and provide efficient and effective services.

Other considerations – As defined in the Public Sector Internal Audit Standards (PSIAS) and the Accounts & Audit Regulations 2015, the Council “must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal audit standards”.

2 KEY MESSAGES & ISSUES

2.1 Since the last meeting of the Accounts and Audit Committee, the following areas for 2022/23 have been a key focus:

- Risk Management – Limited Assurance
- Payroll – Substantial Assurance
- Housing Benefits – High Assurance
- Contain Outbreak Management Fund (COMF) – Conditions met
- Test & Trace Support Payments (TTSP) – Conditions met

2.2 The following reviews are in progress; the findings of which will be reported as per the suggested delivery as per Annex A:

- Amenity Cleansing (Draft report)
- Inventory (Draft report)
- Procurement (Draft report)
- Civic Suite (Draft report)

- Disabled Facilities Grant (Fieldwork completed)
 - Cash & Receipting (Fieldwork completed)
 - Managing Conflicts of Interest (Fieldwork in progress)
 - Cyber Security (Fieldwork in progress)
 - Corporate Strategy (Planning)
- 2.3 Annex A further sets out the overview of delivery for the Internal Audit Plan as agreed by Accounts and Audit Committee; the outputs of which will contribute to the 2022/23 Annual Internal Audit Opinion. If due to circumstances beyond our control we are unable to achieve sufficient depth or coverage, we may need to caveat opinions and explain the impact of this and what will be done to retrieve the position in future.
- 2.4 Accounts and Audit Committee approval will be requested for any amendments to the original plan and highlighted separately to facilitate the monitoring process. The Internal Audit Team were required to undertake detailed testing with regards the Test & Trace Support Payment Grant (TTSP). This required both Chief Executive and Internal Audit sign-off by the 30th June 2022. This work was undertaken and completed alongside the Contain Outbreak Management Fund (COMF) grant work and utilised one day of the contingency allocation. There have been no further proposed changes to the plan.
- 2.5 The Internal Audit Team has successfully recruited to the post of Internal Auditor with the new postholder due to commence in October 2022.
- 2.6 Annex B provides a summary of internal audit recommendations that have been raised and due for implementation as at August 2022. Evidence has been gathered to support the status of implementation.
- 2.7 As August 2022, 80 recommendations were due for implementation. Of these, 67 are considered either implemented, partially implemented or superseded (84%). Of the 13 still outstanding, 10 were originally assessed as high risk. Where agreed actions have not been implemented in line with timescales, discussions have taken place with management to substantiate these explanations and assess whether extensions to implementation dates are considered reasonable.
- 2.8 The Annual Internal Audit Opinion is driven by outputs from the work undertaken. The Internal Audit Team strive to deliver an effective and efficient service which should be underpinned by several key performance indicators. Annex C illustrates performance within the period.
- 2.9 The Quality Assurance & Improvement Programme (QAIP) was presented to Members at the July 2022 meeting, covering all aspects of the internal audit activity. Its intention was to assist in raising standards across the service and ensuring consistency in improvement. This involved an annual self-review of conformance with the Public Sector Internal Audit Standards (PSIAS).
- 2.10 It found that in general, there was conformance against these requirements. Seven recommendations were raised; four of which were not due for implementation at the time of writing, two implemented, and one partially implemented. This recommendation relates to the external assessment, which has been commissioned, and is in progress. The findings will be presented in due course. A summary of progress is highlighted in Annex D.
- 2.11 There have been no referrals made within the period, and there are no open investigations.

3 LIMITATIONS

- 3.1 The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required. Whilst every care has been taken to ensure that the information in this report is as accurate as possible, based on the information provided and documentation reviewed, no complete guarantee or warranty can be given with regards to the advice and information contained herein.
- 3.2 Our work does not provide absolute assurance that material errors, loss or fraud do not exist. Responsibility for a sound system of internal controls and the prevention and detection of fraud and other irregularities rests with management and work performed by internal audit should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify all circumstances of fraud or irregularity.
- 3.3 Effective and timely implementation of our recommendations by management is important for the maintenance of a reliable internal control system. Reports are prepared for your sole use and no responsibility is taken by the auditors to any director or officer in their individual capacity. No responsibility to any third party is accepted as the report has not been prepared for, and is not intended for, any other purpose.

4 CONCLUSION

- 4.1 The Accounts and Audit Committee is asked to note the content of the Progress Report

INTERNAL AUDIT MANAGER

DIRECTOR OF RESOURCES

AA22-22/RP/AC
16 SEPTEMBER 2022

2022/23 – Internal Audit Output Delivery

ANNEX A

Review	Status	Assurance Level
2021/22 c'fwd reviews (contributing to the 2022/23 Opinion)		
Payroll	Final Report	Substantial Assurance
Inventory	Draft Report	
Housing Benefits	Final Report	High Assurance
Amenity Cleansing	Draft Report	
Procurement	Draft Report	
Cash & Receipting	Fieldwork completed	
2022/23 reviews		
Chief Executive's		
Civic Centre	Draft Report	
Management of Conflicts of Interest	Fieldwork in progress	
Corporate Strategy	Planning	
Corporate Health & Safety	Planning	
Section 106 Agreements	Planning	
Data Protection Impact Assessments (DPIA)	Planning	
Electoral Registration	Planning	
Land Charges	Q4	
Community Services		
Commercial Waste Management	Q4	
Resources		
Key Financial Controls	Q4	
Housing Benefits	Q4	
Council Tax & NNDR	Q4	
Insurance	Planning	
Contain Outbreak Management Fund (COMF)	Final Briefing Note	Conditions met
Test & Trace Support Payments (TTSP)	Final Briefing Note	Conditions met
Disabled Facilities Grant (DFG)	Fieldwork completed	
Overtime Payments	Planning	
Payroll	Q4	
Cyber Security	Fieldwork in progress	
ICT Asset Management	Planning	
Economic Development & Planning		
Tourism & Events	Planning	

Review	Status	Assurance Level
Risk Management, Follow Up & Contingency		
Risk Management	Stage 1: Final Report Stage 2: In progress	Limited Assurance -
Follow Up	Q2 - Completed	N/A
	Q4 - In progress	
Contingency	As required	
Planning & Reporting		
PSIAS self-assessment	Completed	Update provided
Investigations	As required – no referrals in the period.	

Internal Audit Recommendations - Follow Up Position (August 2022)

ANNEX B

Review	Year	Assurance Opinion	Actions not yet due	Actions due	Implemented	Partially Implemented	Not Implemented	Superseded
Housing Benefits	2020/21	Substantial	-	2	2	-	-	-
Collection of Income	2020/21	Substantial	-	6	5	-	1	-
Payroll	2020/21	Substantial	-	5	4	-	1	-
Creditors	2020/21	Substantial	-	6	5	1	-	-
Ribblesdale Pool	2021/22	Reasonable	7	13	7	3	3	-
Health & Safety	2021/22	Reasonable	-	16	6	8	1	1
Car Parking	2021/22	Reasonable	-	14	8	3	3	-
Edisford 3G Pitches*	2021/22	Limited	-	11	6*	2	3	-
Treasury Management	2021/22	High	1	1	1	-	-	-
Council Tax	2021/22	Substantial	1	-	-	-	-	-
NNDR	2021/22	Substantial	1	-	-	-	-	-
Grounds Maintenance	2021/22	Moderate	4	-	-	-	-	-
Fleet Management	2021/22	Substantial	2	1	1	-	-	-
Accounts Payable	2021/22	Moderate	-	2	1	-	1	-
Accounts Receivable	2021/22	High	2	-	-	-	-	-
General Ledger	2021/22	Substantial	-	3	-	3	-	-
Payroll	2021/22	Substantial	5	-	-	-	-	-
Risk Management	2022/23	Limited	9	-	-	-	-	-
TOTAL			32	80	46	20	13	1

*Implemented; subject to ongoing detailed testing. **The review of cash and receipting (2020/21) is in the process of being followed up as part of the annual review.

Internal Audit - Performance Indicators

ANNEX C

Indicator	Target	Actual
Post Audit Evaluation Questionnaire issued following completion of every audit assignment.	100%	100%
Post Audit Evaluation Questionnaire responses receiving either a good, very good or excellent rating.	100%	100%
Recommendations raised and agreed by management (in the period).	100%	100%
Recommendations which are implemented within agreed timescales.	90%	84%
Management responses received within 10 workings days of the Draft Report (for reports finalised within the period).	90%	100%
Final Reports issued within 5 working days from receiving management responses (in the period).	90%	100%
Audits completed within budget (in the period).	75%	100%

Summary PSIAS Quality Assurance Improvement Plan - Progress

ANNEX D

Standard	Conformance		
	Compliant	Partially Compliant	Non-Compliant
1000 – Purpose, Authority and Responsibility	✓		
1100 – Independence and Objectivity	✓		
1200 – Proficiency and Due Professional Care		✓	
1300 – Quality Assurance and Improvement Programme		✓	
2000 – Managing the Internal Audit Activity		✓	
2100 – Nature of Work	✓		
2200 – Engagement Planning	✓		
2300 – Performing the Engagement		✓	
2400 – Communicating Results	✓		
2500 – Monitoring Progress	✓		
2600 – Communicating the Acceptance of risks	✓		

Updated Position

Seven recommendations were raised as part of the self-assessment undertaken by the Internal Audit Manager. Of these, four were not yet due for implementation at the time of writing, two considered implemented and one partially implemented. This relates to the external assessment which has been commissioned (in line with the Contract Procedure Rules) and is in progress. The outputs of which will be reported to this Committee.

**RIBBLE VALLEY BOROUGH COUNCIL
 REPORT TO ACCOUNTS AND AUDIT COMMITTEE**

meeting date: 28 SEPTEMBER 2022
 title: DISPOSAL OF ASSETS
 submitted by: DIRECTOR OF RESOURCES
 principal author: JANE PEARSON

1 PURPOSE

1.1 To inform members regarding the process followed for the disposal of assets and how such receipts are used.

2 FINANCIAL REGULATIONS

2.1 The Council has a set of Financial Regulations which provide the overall key control framework to enable the organisation to exercise effective financial management and control of its resources and assets. Another key purpose of the Regulations is to support and protect Members and staff in the performance of their duties where financial issues are involved.

2.2 These are reviewed annually by Policy and Finance Committee and approved by Full Council. Importantly they form part of the Council's Constitution.

Extract from Financial Regulations – Section 13 Assets

5) Disposal of Assets

The Council has a duty to obtain the best price reasonably obtainable when any assets are disposed of.

The Head of Legal and Democratic Services may approve the disposal of any land and property below the value of £50,000. Approval must be sought from the relevant service committee and Policy and Finance Committee for the disposal of any land and property of £50,000 or above.

The Director of Resources must also be consulted on any proposed method of disposal for any assets in order to ensure that such methods meet the best interests of the Council and would maximise any financial return to the Council.

Each Director is responsible for ensuring that asset disposals are in accordance with these procedures.

3 PROCESS FOR DISPOSAL OF VEHICLES

3.1 A manager wishing to dispose of a vehicle is required to set out options for its disposal along with a recommendation of the preferred option and reason for this. This is submitted to their Director for approval and then further to the Director of Resources.

3.2 Options include (but are not limited to):

- trade in
- sale via advertising

- sealed bids
 - reserve price
 - sale via an auction (local or specialist)
 - sale for scrap.
- 3.3 The recommended method will much depend on the condition and roadworthiness of the vehicle being disposed of.
- 3.4 In terms of the use of proceeds from the sale of vehicles, this depends on the amount realised.
 - For amounts over £10k these must be set aside as capital receipts. They are credited to the Usable Capital Receipts Reserve as capital income and are then used to fund the capital programme
 - For amounts under £10k these are credited to the Capital Reserve Fund and though these are officially in a revenue earmarked reserve we use these receipts to also fund the capital programme

4 CONCLUSION

- 4.1 The recommended method of disposal depends much on the estimated value of the asset and in the case of vehicles their current roadworthiness.

AA15-22/JP/AC
13 September 2022

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS AND AUDIT COMMITTEE

INFORMATION

meeting date: 28 SEPTEMBER 2022
title: STATEMENT OF ACCOUNTS 2021/22 PROGRESS
submitted by: DIRECTOR OF RESOURCES
principal author: LAWSON ODDIE

1 PURPOSE

1.1 To provide Committee with an update on progress with regard to the production, publication and external audit of the Statement of Accounts for 2021/22.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives – none identified
- Corporate priorities – to continue to be a well-managed Council, providing efficient services based on customer need and meets the objective within this priority of maintaining critical financial management controls, ensuring the authority provides council taxpayers with value for money

2 BACKGROUND

2.1 At your meeting on 2 February 2022, Committee approved the Closure of Accounts Timetable 2021/22.

2.2 The Accounts and Audit (amendment) Regulations 2021 (SI no 2021/263) came into force on 31 March 2021 (for two years) and set the draft accounts publication date to 1 August and the final accounts publication date as 30 September.

2.3 Within the Closure of Accounts Timetable, the Statement of Accounts 2021/22 were due to be completed and authorised for publication by 29 July 2022 and for the audit of the accounts to be completed by the end of September, in line with regulations that were in place at the time.

3 CURRENT POSITION

3.1 It is pleasing to report that the deadline for the publication of the draft accounts was met and the [Statement of Accounts \(Subject to Audit\)](#) were made available on our website on 29 July 2022.

3.2 At the time of reporting the Closure of Accounts Timetable in February, it was highlighted that the Department for Levelling Up, Housing and Communities (DLUHC) had written to local authorities and relevant audit firms to provide an update on action the government was taking to help tackle audit delays.

3.3 As part of these wider measures there was a temporary measure being proposed for consultation, to introduce secondary legislation to extend the deadline for publishing audited local authority accounts to 30 November 2022 for the 2021/22 accounts – for future years this would then be 30 September.

3.4 At that stage the Closure of Accounts Timetable 2021/22 included the deadline for the audit of the accounts as the end of September, which was the deadline that was in place under regulations in place at that time.

3.5 On the 22 July 2022 the DLUHC proposed changes to audit deadlines were brought in through the Accounts and Audit (Amendment) Regulations 2022, and our external auditors, Grant Thornton, are now working to this deadline. As a result, it is now anticipated that the audited Statement of Accounts 2021/22 will be brought to your meeting on 23 November 2022.

4 CONCLUSION

4.1 The deadlines for the preparation of the draft Statement of Accounts was 1 August 2022 and this was met, with the draft accounts being published on 29 July 2022.

4.2 The change proposed by DLUHC to the audit deadline was brought in through the Accounts and Audit (Amendment) Regulations 2022, changing the deadline from the end of September to the end of November.

4.3 The council's external auditors, Grant Thornton, are now working to this new deadline for the audit of the Statement of Accounts.

4.4 It is now anticipated that the audited Statement of Accounts will be brought to committee for approval on 23 November 2022.

HEAD OF FINANCIAL SERVICES

DIRECTOR OF RESOURCES

AA16-22/LO/AC
16 September 2022