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| REPORT TO: | ETHICS COMMITTEE 28 FEBRUARY 2018 |
| SUBJECT: | RECENT DEVELOPMENT ON THE REGULATION OF COUNCILLOR CONDUCT |
| LEAD OFFICER: | DIRECTOR OF LAW AND & MONITORING OFFICER |
| CABINET MEMBER: | CLLR SIMON HALL – CABINET MEMBER FOR FINANCE AND TREASURY |
| WARDS: | ALL |
| CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider and recommend revisions to the Code of Conduct. | |
| FINANCIAL IMPACT Implementation of the recommendations contained in this report have no financial implications. | |
| FORWARD PLAN KEY DECISION REFERENCE NO: This is not a key decision. | |

1. RECOMMENDATIONS

The Committee is asked to:

1.1 Note the recent Department for Communities and Local government (DCLG) consultation: *Disqualification criteria for Councillors and Mayors*.

1.2 (i) Note the recent Committee on Standards in Public Life (CSPL) consultation: *Review of local government ethical standards* (ii) advise the Monitoring Officer of any response the Standards' Committee wishes to make to the consultation and (iii) delegate to the Monitoring Officer in consultation with the Chairman of the Standards' Committee authority to respond to the consultation on behalf of the Committee.

1.3 Note the outcome of a recent case in relation to the regulation of Councillor conduct.

2. EXECUTIVE SUMMARY

2.1 This report provides details of the recent consultation by the DCLG: *Disqualification criteria for Councillors and Mayors*. The consultation seeks views on extending the current disqualification criteria to include anyone subject to:

- the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as “being on the sex offenders register”);

- a civil injunction granted under section 2 of the Anti-social Behaviour Crime and Policing Act 2014; or
- a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014

from standing or holding office as a local authority Member, Directly Elected Mayor or Member of the London Assembly during subsistence of those requirements or sanctions.

- 2.2 This report also provides details of a case where the former Deputy Leader of Sandwell Metropolitan Borough Council breached the local authority's code of conduct over the alleged sale of three public toilet blocks at an undervalue and the cancellation of parking tickets.

3. DETAIL

DCLG Consultation: Disqualification criteria for Councillors and Mayors.

- 3.1 The DCLG have recently held a consultation on extending the disqualification criteria for Councillors and Mayors. The consultation ran from 18 September 2017 to 8 December 2017. Responses are currently being analysed. The consultation paper sets out the government's proposals for updating the criteria for disqualifying individuals from being elected or holding office as a local authority member, directly elected mayor or member of the London Assembly.
- 3.2 The capacity for councillors to hold and remain in office is currently regulated by statute. The current criteria relating to disqualification is set out in the Local Government Act 1972 section 80 and provides that councillors or prospective councillors are disqualified if five years before or since election they have been convicted of an offence and imprisoned "for a period of not less than three months without the option of a fine." Other specified disqualification conditions also apply including employment by the authority or authorities in question, bankruptcy and disqualification under Part III of the Representation of the People Act 1983 (legal proceedings). Similar provisions affect elected mayors of combined authorities (under paragraph 9 of Schedule 5B to the Local Democracy Economic Development and construction Act 2009) and London mayors or assembly members under section 21 of the Greater London Authority Act 1999.
- 3.3 The government considers that the law should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour. As a result the government is consulting on extending the current disqualification criteria to include anyone subject to:
- the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as "being on the sex offenders register");
 - a civil injunction granted under section 2 of the Anti-social Behaviour Crime and Policing Act 2014; or
 - a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014

from standing for or holding office as a local authority member, directly elected member or member of the London Assembly.

- 3.4 Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy Economic Development and Construction Act 2009 and the Greater London Authority act 1999.
- 3.5 The proposed changes would not act retrospectively.
- 3.6 The Local Government Association (LGA) has provided a written response to the DCLG consultation. The LGA supports the objective of ensuring the highest standards of integrity and conduct among councillors and mayors. It supports measures intended to improve public confidence in elected officials.
- 3.7 The LGA is supportive of some of the measures in the consultation, specifically the proposal to disbar individuals on the sex offenders register. The current inability to require individuals who have been placed on the sex offenders register to stand down from their local elected office has undermined public confidence in local government.
- 3.8 However, the LGA raised concerns as to why the proposals only applied to local councillors. If individuals that are on the sex offenders list or subject to an ASB order are unable to hold elected office, then this should also apply to Police and Crime Commissioners, Parliamentary candidates and Members of both Houses of Parliament. Uneven standards are unjustifiable and should be the same for all elected individuals.
- 3.9 Individuals who are subject to a sexual risk order should also be disqualified from seeking or holding office, on the basis that they could also pose a safeguarding risk and undermine public confidence. This should also apply to all elected individuals.
- 3.10 The LGA also raised concerns regarding the lack of information put forward to support the wider proposals e.g. for disqualification of individuals subject to a civil injunction or Criminal Behaviour Order. There are many different types of anti-social behaviour behaviours and they could include 'legitimate protests' thereby preventing protests of a cause that has significant local support. The LGA is concerned that the criteria could be abused by political opponents seeking to have these sanctions imposed where there is a disagreement on local issues.
- 3.11 The LGA do recognise that there are some specific categories of anti-social behaviour, such as hate crime, for which there may be justification for excluding individuals found guilty of them from the democratic process. However, the LGA believe that the Government has failed to provide a strong enough rationale or sufficiently describe what the issue is that it is trying to address.
- 3.12 Members can view the full DCLG consultation paper at:

<https://www.gov.uk/government/consultations/disqualification-criteria-for-councillors-and-mayors>

3.13 The LGA response can be viewed at:

<https://www.local.gov.uk/sites/default/files/documents/LGA%20submission%20to%20the%20consultation%20on%20disqualification%20criteria%20for%20councillors%20and%20mayors.pdf>

Committee on Standards in Public Life (CSPL) Stakeholder Consultation: Review of Local Government Ethical Standards

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

3.15 ***Terms of Reference.*** The terms of reference for the review are to:

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

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

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

3.18 ***Consultation questions:*** The Committee invites responses to the following consultation questions.

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

Codes of conduct

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

Investigations and decisions on allegations

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

Sanctions

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

Declaring interests and conflicts of interest

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

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

Whistleblowing

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

Improving standards

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

Intimidation of local councillors

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

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

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

3.20 Members can view the full CSPL consultation paper at:

<https://www.gov.uk/government/consultations/local-government-ethical-standards-stakeholder-consultation>

Case: Sandwell Metropolitan Borough Council Standards' Committee decision.

- 3.21 In the Sandwell Council case the authority's Standards' Committee considered allegations that the Deputy Leader Councillor Mahboob Hussain had breached the councillor code of conduct in connection with the sale at an undervalue of three public toilet blocks to a family friend and the cancellation of parking tickets issued to family members. After a three day hearing the Standards' Committee found Councillor Mahboob Hussain had breached the code of conduct in connection with the sale of the three public toilet blocks at an undervalue to a family friend. The Standards' Committee also found that the councillor had instructed officers to reduce or cancel three parking tickets for his wife and sons.
- 3.22 Councillor Hussain's lawyers sought an adjournment of the hearing but this was unsuccessful and the hearing went ahead without him. He is reported to have

said that he refuted the allegations and would have liked to have had the opportunity to defend himself.

3.23 The Standards' Committee found that the actions of Councillor Hussain brought the council into disrepute, compromised officers' impartiality and gave an unfair advantage to the family friend who bought the public toilet blocks and his wife and sons regarding the parking tickets.

3.24 A further hearing in the next few weeks will consider what action is to be taken.

3.25 Members can read further details at:

http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=33783%3Acouncillor-breached-code-of-conduct-over-toilet-sales-parking-tickets&catid=59&Itemid=27

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 There are no direct financial implications arising from this report.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

CONTACT OFFICERS: Jacqueline Harris-Baker, Director of Law and Monitoring Officer (ext. 62328)

BACKGROUND DOCUMENTS: None