

North East Derbyshire District Council

Standards Committee

23 January 2025

Government Consultation “strengthening the standards and conduct framework for local authorities in England.”

Report of the Assistant Director of Governance and Monitoring Officer

Classification: This report is public

Report By: Sarah Sternberg, Assistant Director of Governance and Monitoring Officer

Contact Officer: Sarah Sternberg, Assistant Director of Governance and Monitoring Officer

PURPOSE / SUMMARY

To inform Standards Committee of the contents of the consultation “Strengthening the standards and conduct framework for local authorities in England” and provide a response on behalf of the Council.

RECOMMENDATIONS

1. That Members consider the draft and comment on the responses in Appendix A
2. That the Monitoring Officer, in consultation with the Chair and Vice Chair of Standards Committee, formulate the final response for submission.

IMPLICATIONS

Finance and Risk: Yes No

Details:

On Behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

As in the report.

On Behalf of the Solicitor to the Council

Staffing: Yes No

Details:

On behalf of the Head of Paid Service

DECISION INFORMATION

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: NEDDC: Revenue - £125,000 <input type="checkbox"/> Capital - £310,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Significantly Affected	None
Equality Impact Assessment (EIA) details:	
Stage 1 screening undertaken <ul style="list-style-type: none">Completed EIA stage 1 to be appended if not required to do a stage 2	Not applicable as is a consultation response.
Stage 2 full assessment undertaken <ul style="list-style-type: none">Completed EIA stage 2 needs to be appended to the report	No, not applicable
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/> SMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Yes – Standards Committee.

Links to Council Plan priorities;

- **A great place that cares for the environment**
- **A great place to live well**
- **A great place to work**
- **A great place to access good public services**

Indirectly all the above.

REPORT DETAILS

1 **Background** *(reasons for bringing the report)*

- 1.1 The existing ethical framework has been in place since the Localism Act 2011. There has been criticism of the framework as it stands, not least from the LGA who asked the previous Government to consider a number of changes. The Deputy Prime Minister, at the last LGA Conference stated that the new Government would be looking to make changes.
- 1.2 Under the current system:
- There is no requirement for a national model code to be adopted by all local authorities. The LGA has produced a model code which this Council (along with many others) has adopted with a small number of additions.
 - Councils must approve a code of conduct in line with the Nolan Principles. In some cases, a local authority's code consists solely of the Nolan Principles.
 - Complaints that councillors (district and parish) have breached the code of conduct can be made to the Monitoring Officer and dealt with through the Standards Committee where an investigation concludes there has been a breach of the code.
 - Sanctions are very limited for any councillor found to have breached the code. The most serious is that the councillor is formally censured.
 - Parish and Town Councils are not obliged to accept the Standards Committee decision in relation to a complaint nor do they have to implement any sanction.
 - Independent Persons are recruited but are engaged solely in relation to the complaints process and are not members of a standards committee. They are in place to provide guidance at all parts of the process to the Monitoring Officer and the Standards Committee.
 - There is no requirement to have a separate stand alone standards committee, although NEDDC always has.
- 1.3 It has long been felt that the system is ineffective and does not serve the public well.
- 1.4 The Government made it clear that it intended to consult upon changes including introducing mandatory Codes of Conduct, increased sanctions including suspension and disqualification and a national body which could deal with appeals against suspension/disqualification.

1.5 The result is the “Strengthening the standards and conduct framework for local authorities in England” consultation paper which seeks responses from elected members, officers and councils.

1.6 The main areas for consultation are:

- The introduction of a mandatory minimum code of conduct for local authorities in England.
- A requirement that all councils are required to have a standards committee.
- A requirement that complaints are dealt with through the standards committees and not through the Monitoring Officer. The Government believe this would improve transparency, aid consistency and provide a formal route for dealing with vexatious complainants.
- Whether the membership of the standards committee should include one of the Independent Persons and a co-opted councillor from the parish and town councils.
- Standards committees being required to publish a summary of complaints.
- Requiring the completion of an investigation if a member stands down.
- Introducing the power to suspend a councillor for up to 6 months with the power to withhold allowances and institute premises and facilities bans.
- In some cases, the introduction of an interim suspension on the councillor where a complaint is complex, take time to conclude and/or referred to the Police for investigation.
- Introduce a power to disqualify where a councillor has been suspended on more than one occasion.
- Introduce a right of appeal against a suspension or disqualification. This would be to a new national body.

1.7 The deadline for responses is the 26th February 2025 which is before the next meeting of Standards Committee.

2. Details of Proposal or Information

2.1 At Appendix 1 are set out the questions being asked with some draft responses for consideration and amendment by Members.

2.2 Following the meeting, a final version will be produced and agreed with the Chair and Vice Chair of Standards Committee and submitted.

3 Reasons for Recommendation

3.1 To ensure the Council engages with and helps formulate changes to the ethical framework by responding to the government consultation on changes affecting all Councillors.

4 Alternative Options and Reasons for Rejection

4.1 It is not considered appropriate not to respond. The Council should be involved in its own ethical framework.

DOCUMENT INFORMATION

Appendix No	Title
1	Draft consultation responses
2	Link to consultation: Strengthening the standards and conduct framework for local authorities in England - GOV.UK
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	
None	

Appendix 1

a) Mandatory minimum prescribed code of conduct

Question 2

Do you think the government should prescribe a mandatory minimum code of conduct for local authorities in England?

- Yes
- No
- If no, why not? [Free text box]

Suggested response:

Yes

At present, each council can choose its own code of conduct. This can be the minimum of the Nolan Principles or the LGA Model Code which this Council has adopted or any other form of code. This means there is no consistency for either elected members or the public. Codes of conduct can and often are different for each council. This system does not ensure that there are clear guidelines for behaviour and this brings the system into disrepute.

In relation to Parish and Town Councils where elected members can be on both Parish/Town Councils and the District or Borough this increases the confusion for both elected members and the public. The public will be confused as to why the code different is for this member when acting as a Parish/Town councillor than when they are acting as a district or borough councillor. They will start to think the rules are different.

In addition although the framework does not apply to the private life of an elected member, this is not clear to members of the public or even other councillors on some occasions. This should be made very clear at the start of a model code and any national guidance produced to support the code.

Question 3

If yes, do you agree there should be scope for local authorities to add to a mandatory minimum code of conduct to reflect specific local challenges?

- Yes – it is important that local authorities have flexibility to add to a prescribed code
- No – a prescribed code should be uniform across the country
- Unsure
- **Suggested response:**

Yes.

Question 4

Do you think the government should set out a code of conduct requirement for members to cooperate with investigations into code breaches?

- Yes
- No
- Unsure

Suggested response:

Yes

b) Standards Committees**Question 5**

Does your local authority currently maintain a standards committee?

- Yes
- No
- Any further comments [free text box]

Suggested response:

Yes

This Council has always believed that the best way to demonstrate its strong belief in elected members behaving ethically is demonstrated by the status given to the issue by the Council having a separate Standards Committee.

Question 6

Should all principal authorities be required to form a standards committee?

- Yes
- No
- Any further comments [free text box]

Suggested response:

Yes

This Council believes that merging the role of the Standards Committee with another committee would undermine and diminish the perceived importance of the ethical framework and that the work in relation to allegations of breach of the code of conduct are not considered to be important. Also, such a merger would reduce the opportunity for the development of skills in this area. It is likely that the skills required for the other part of the Committee's role (for example the Audit role) would dominate.

Question 7

In most principal authorities, code of conduct complaints are typically submitted in the first instance to the local authority Monitoring Officer to triage, before referring a case for full investigation. Should all alleged code of conduct breaches which are referred for investigation be heard by the relevant principal authority's standards committee?

- Yes, decisions should only be heard by standards committees
- No, local authorities should have discretion to allow decisions to be taken by full council
- Unsure

Suggested response:

Yes , decisions should only be heard by standards committees

Question 8

Do you agree that the Independent Person and co-opted members should be given voting rights?

- Yes – this is important for ensuring objectivity
- No – only elected members of the council in question should have voting rights
- Unsure

Suggested response:

No

Question 9

Should standards committees be chaired by the Independent Person?

- Yes
- No
- Unsure

Suggested response:

No

Question 10

If you have further views on ensuring fairness and objectivity and reducing incidences of vexatious complaints, please use the free text box below.

[Free text box]

Suggested response:

A fixed process involving the standards committee and being shown clearly on a diagram to the public would significantly aid the public's understanding and thus the transparency of the process. Although complainants are always given a copy of the procedure used in relation to complaints, it is clear that they either don't read this or do not understand it. A simple process shown on a diagram produced as part of the model code would help the public's perception of the transparency of the process.

c) Publishing investigation outcomes

Question 11

Should local authorities be required to publish annually a list of allegations of code of conduct breaches, and any investigation outcomes?

- Yes - the public should have full access to all allegations and investigation outcomes
- No - only cases in which a member is found guilty of wrongdoing should be published
- Other views – text box

Suggested response:

No

This Authority publishes anonymised complaint outcomes through its Standards Committee. This has always been considered to be an aid to transparency and understanding for the public and can be found easily if looked for. This is not considered to be damaging to the particular councillor concerned as it is not highlighted to the public (as in an annual report) but is part of the Standards Committee's usual business.

There is no annual list published and for the reasons above it would not be considered to be appropriate to require one.

d) Requiring the completion of investigations if a member stands down

Question 12

Should investigations into the conduct of members who stand down before a decision continue to their conclusion, and the findings be published?

- Yes
- No
- Unsure

Suggested response:

Yes

e) Empowering individuals affected by councillor misconduct to come forward

Question 13

If responding as a local authority, what is the average number of complaints against elected members that you receive over a 12-month period?

[Number box] - 10

Question 13a

For the above, where possible, please provide a breakdown for complaints made by officers, other elected members, the public, or any other source:

- Complaints made by officers [Number box] 0
- Complaints made by other elected members [Number box] 5
- Complaints made by the public [Number box] 5
- Complaints made by any other source [Number box] 0

Question 14

If you currently work, or have worked, within a local authority, have you ever been the victim of (or witnessed) an instance of misconduct by an elected member and felt that you could not come forward? Please give reasons if you feel comfortable doing so.

- Yes
- No
- [Free text box]

Suggested response:

N/A

Question 15

If you are an elected member, have you ever been subject to a code of conduct complaint? If so, did you feel you received appropriate support to engage with the investigation?

- Yes
- No
- [Free text box]

Suggested response:

N/A

Question 16

If you did come forward as a victim or witness, what support did you receive, and from whom? Is there additional support you would have liked to receive?

[Free text box]

Suggested response:

N/A

Question 17

In your view, what measures would help to ensure that people who are victims of, or witness, serious councillor misconduct feel comfortable coming forward and raising a complaint?

[Free text box]

Suggested response:

A universal and clear process for dealing with complaints across England which is publicised and hopefully inspires confidence in the system.

A clear and publicised explanation of what the individual tiers of local government are responsible for.

6. Introducing the power of suspension with related safeguards

Question 18

Do you think local authorities should be given the power to suspend elected members for serious code of conduct breaches?

- Yes – authorities should be given the power to suspend members
- No – authorities should not be given the power to suspend members
- Unsure

Suggested response:

Yes

Question 19

Do you think that it is appropriate for a standards committee to have the power to suspend members, or should this be the role of an independent body?

- Yes - the decision to suspend for serious code of conduct breaches should be for the standards committee
- No - a decision to suspend should be referred to an independent body
- Unsure
- [Free text box]

Suggested response:

Yes

The local authority should, in the first instance, be responsible itself for the ethics of its own councillors and thus should be responsible for imposing any sanction. This avoids the temptation for councillor colleagues to say the sanctions were nothing to do with them and it was the national body which was responsible for imposing the sanction.

In relation to Parish and Town Councils, in the rare cases where a suspension may be imposed, the Parish or Town Council should not be able to refuse to accept the sanction on its elected member.

Question 20

Where it is deemed that suspension is an appropriate response to a code of conduct breach, should local authorities be required to nominate an alternative point of contact for constituents during their absence?

- Yes – councils should be required to ensure that constituents have an alternative point of contact during a councillor’s suspension
- No – it should be for individual councils to determine their own arrangements for managing constituents’ representation during a period of councillor suspension
- Unsure

Suggested response:

Yes

a) The length of suspension

Question 21

If the government reintroduced the power of suspension do you think there should be a maximum length of suspension?

- Yes – the government should set a maximum length of suspension of 6 months
- Yes – however the government should set a different maximum length (in months) [Number box]
- No – I do not think the government should set a maximum length of suspension

- Unsure

Suggested response:

Yes – the government should set a maximum length of suspension of 6 months

Question 22

If yes, how frequently do you consider councils would be likely to make use of the maximum length of suspension?

- Infrequently – likely to be applied only to the most egregious code of conduct breaches
- Frequently – likely to be applied in most cases, with some exceptions for less serious breaches
- Almost always – likely to be the default length of suspension for code of conduct breaches
- Unsure

Suggested response:

Infrequently – likely to be applied only to the most egregious code of conduct breaches.

b) Withholding allowances and premises and facilities bans

Question 23

Should local authorities have the power to withhold allowances from suspended councillors in cases where they deem it appropriate?

- Yes – councils should have the option to withhold allowances from suspended councillors
- No – suspended councillors should continue to receive allowances
- Unsure

Suggested response:

Yes – councils should have the option to withhold allowances from suspended councillors

Question 24

Do you think it should be put beyond doubt that local authorities have the power to ban suspended councillors from council premises and to withdraw the use of council facilities in cases where they deem it appropriate?

- Yes – premises and facilities bans are an important tool in tackling serious conduct issues

- No – suspended councillors should still be able to use council premises and facilities
- Unsure

Suggested response:

Yes

Question 25

Do you agree that the power to withhold members' allowances and to implement premises and facilities bans should also be standalone sanctions in their own right?

- Yes
- No
- Unsure

Suggested response:

Yes

c) Interim suspension

Question 26

Do you think the power to suspend councillors on an interim basis pending the outcome of an investigation would be an appropriate measure?

- Yes, powers to suspend on an interim basis would be necessary
- No, interim suspension would not be necessary
- Any further comments [free text box]

Suggested response:

Yes

Question 27

Do you agree that local authorities should have the power to impose premises and facilities bans on councillors who are suspended on an interim basis?

- Yes - the option to institute premises and facilities bans whilst serious misconduct cases are investigated is important
- No - members whose investigations are ongoing should retain access to council premises and facilities
- Unsure

Suggested response:

Yes

Question 28

Do you think councils should be able to impose an interim suspension for any period of time they deem fit?

- Yes
- No
- Any further comments [free text box]

Suggested response:

Yes

Also whilst it would be helpful to have the interim suspension in extreme cases, it would be only rarely used and in the specific circumstances outlined in the guidance. This is akin to the situation with employees the subject of an investigation. In those circumstances, the suspension is not a sanction against the employee. In relation to members the same word, "suspension" is being used for both the sanction and the interim measure. This would be unclear and confusing to the public and councillors alike. Therefore an alternative word should be used to make the distinction.

Question 29

Do you agree that an interim suspension should initially be for up to a maximum of 3 months, and then subject to review?

- Yes
- No
- Any further comments [free text box]

Suggested response:

Yes

It is not always possible to predict the length of time that an investigation will take and what will become apparent during that time. However, it would be appropriate to have an initial period limit of 3 months but with the power to extend as necessary when related to the needs of the investigation and fairness.

Question 30

If following a 3-month review of an interim suspension, a standards committee decided to extend, do you think there should be safeguards to ensure a period of interim extension is not allowed to run on unchecked?

- Yes – there should be safeguards
- No – councils will know the details of individual cases and should be trusted to act responsibly

Suggested response:

Yes

Question 30a

If you answered yes to above question, what safeguards do you think might be needed to ensure that unlimited suspension is not misused?

[Free text box]

Suggested response:

There should be regular reviews of the suspension, not just at the end of the 3 months.

The review could be carried out by one of the Independent Persons who is not involved in the complaint.

The investigator should be asked how much longer they estimate is needed for the investigation.

The review should include a review of any temporary arrangements put in place for constituents and whether any additional ones should be introduced.

In addition it should be born in mind that appointing an investigator for these complaints usually means someone is taking on the investigation in addition to their day job. This means that they are trying to fit it in when already very busy. This adds to the length of time it takes to investigate these complaints on the rare occasions that they are serious enough to be investigated. This, of course, affects how long an interim suspension would last and how many times it is extended.

d) Disqualification for multiple breaches and gross misconduct

Question 31

Do you think councillors should be disqualified if subject to suspension more than once?

- Yes – twice within a 5-year period should result in disqualification for 5 years
- Yes – but for a different length of time and/or within a different timeframe (in years) [Number boxes]
- No - the power to suspend members whenever they breach codes of conduct is sufficient
- Any other comments [free text box]

Suggested response:

Yes – twice within a 5-year period should result in disqualification for 5 years

Consideration should be given to whether the length of suspension should be part of the consideration. For example 2 suspensions of a day each for different breaches should not be treated in the same way as 2 suspensions, each for 3 months. Some discretion needs to be added to evaluate each case on its merits.

In addition, there is a risk that at the end of the 5 year disqualification, an individual stands again as a candidate and is re elected. Thus giving the impression that the public are not concerned with the ethics issue at all.

Question 32

Is there a case for immediate disqualification for gross misconduct, for example in instances of theft or physical violence impacting the safety of other members and/or officers, provided there has been an investigation of the incident and the member has had a chance to respond before a decision is made?

- Yes
- No
- Unsure
- [Free text box]

Suggested response:

No

If the ability to issue a premises ban is in place, this would be more appropriate.

e) Appeals

Question 33

Should members have the right to appeal a decision to suspend them?

- Yes - it is right that any member issued with a sanction of suspension can appeal the decision
- No – a council's decision following consideration of an investigation should be final
- Unsure

Suggested response:

Yes

Question 34

Should suspended members have to make their appeal within a set timeframe?

- Yes – within 5 days of the decision is appropriate to ensure an efficient process
- Yes – but within a different length of time (in days) [Number box]
- No – there should be no time limit for appealing a decision

Suggested response:

Yes – but within a different length of time (in days) [Number box] – **suggested 10 days.**

Question 35

Do you consider that a complainant should have a right of appeal when a decision is taken not to investigate their complaint?

- Yes
- No
- Unsure

Suggested response:

No

Question 36

Do you consider that a complainant should have a right of appeal when an allegation of misconduct is not upheld?

- Yes
- No
- Unsure

Suggested response:

No

Question 37

If you answered yes to either of the previous two questions, please use the free text box below to share views on what you think is the most suitable route of appeal for either or both situations.

[Free text box]

Suggested response:

Currently, the complainant can approach the Local Government Ombudsman in relation to a complaint. This can be about how the complaint has been handled. The Ombudsman will only consider the complaint if the complainant shows that there has been potential injustice to the complainant. This is free.

Any other challenge would have to be through Judicial Review in the courts at great cost to the individual.

It is the experience of this local authority that most of the complaints do not proceed to investigation. This is because the complaints are outside the code (e.g. about private life) or very minor and do not justify the expense and time for an investigation because the outcome is unlikely to warrant a significant sanction.

Allowing an appeal by the complainant is likely to prolong the matter without offering a substantially different outcome.

This local authority has not held a hearing into a complaint following an investigation. However the lack of certainty this would allow following a detailed consideration of the complaint would not help councils in dealing with these complaints and preserving the reputation of the council.

f) Potential for a national appeals body

Question 38

Do you think there is a need for an external national body to hear appeals?

- Yes – an external appeals body would help to uphold impartiality
- No – appeals cases should be heard by an internal panel
- Any further comments [free text box]

Suggested response:

Yes

It would make sense to use an existing body to deal with these appeals. There should not be very many appeals as they should be the exception. This would also aid transparency and objectivity as to how the complaints are dealt with.

Question 39

If you think there is a need for an external national appeals body, do you think it should:

- Be limited to hearing elected member appeals
- Be limited to hearing claimant appeals

- Both of the above should be in scope
- Please explain your answer [free text box]

Suggested response:

Be limited to hearing elected member appeals

Please see above reasons.

7. Public Sector Equality Duty

Question 40

In your view, would the proposed reforms to the local government standards and conduct framework particularly benefit or disadvantage individuals with protected characteristics, for example those with disabilities or caring responsibilities?

Please tick an option below:

- it would benefit individuals with protected characteristics
- it would disadvantage individuals with protected characteristics
- neither

Please use the text box below to make any further comment on this question.

[Free text box]

Suggested response:

Nether

Any action (such as an investigation) would be arranged so that any protected characteristics could be adjusted for.