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Local government standards in England

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Inside:

1. Councillors' conduct and interests
2. Codes of conduct
3. Complaints about breaches of codes of conduct
4. Standards regimes in devolved areas



Contents

Summary	3
1. Councillors' conduct and interests	4
1.1 Standards regimes in England	4
1.2 The 2012 standards regime	4
1.3 CSPL report 2019	5
2. Codes of conduct	8
2.1 Drawing up codes of conduct	8
2.2 How interests must be registered	8
2.3 Dispensations	9
3. Complaints about breaches of codes of conduct	10
3.1 Investigating alleged breaches	10
3.2 The independent person	10
3.3 Sanctions	10
4. Standards regimes in devolved areas	12
4.1 Scotland	12
4.2 Wales	12
4.3 Northern Ireland	13

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Summary

In England, local authorities are responsible for councillor standards and conduct. They must maintain a code of conduct and a register of disclosable pecuniary interests, and deal with allegations of breaches in the code and failure to register pecuniary interests. This system was introduced by the [Localism Act 2011](#). Between 2000 and 2012, an England-wide code of conduct was maintained, and breaches investigated, by Standards for England (formerly the Standards Board).

Local government standards are devolved to Scotland, Wales and Northern Ireland, each of which have a single standards regime managed by an organisation at the devolved level. The bulk of this note addresses the regime in England, with some further links to information regarding the devolved territories.

1. Councillors' conduct and interests

1.1 Standards regimes in England

In England, local authorities are responsible for councillor standards and conduct. They must maintain a code of conduct and a register of disclosable pecuniary interests, and deal with allegations of breaches in the code and failure to register pecuniary interests. This system was introduced by the [Localism Act 2011](#).

Local government standards are devolved to Scotland, Wales and Northern Ireland. The bulk of this note addresses the regime in England: the devolved territories are addressed in Section 4.

A code of standards for councillors, applying to England, Wales and Scotland, had existed since 1975.¹ The third report of the Committee on Standards in Public Life, published in 1997, investigated the operation of that code in some detail.² It recommended that local authorities should adopt their own codes of conduct, but within a national framework, and therefore recommended the production of a model code of conduct. It recommended that local authorities should maintain public registers of interests, but that failing to declare a pecuniary interest should no longer be a criminal offence. Local authorities should be required to establish standards committees, which should have the power to suspend councillors for up to three months.

Between 2000 and 2012, Standards for England (formerly the Standards Board) was responsible for drawing up an England-wide code of conduct for councillors, registering pecuniary interests, and dealing with allegations of breaches in the code of conduct.³ This included imposing sanctions on councillors, which could include suspending them from office. This regime was adjusted by the [Local Government and Public Involvement in Health Act 2007](#), which introduced the option of resolving complaints locally.⁴

1.2 The 2012 standards regime

The *Localism Act 2011* gave effect to a long-standing Conservative Party commitment to abolish the Local Government Standards Board, which finally took effect on 1 April 2012. The Act included the following measures:

- The abolition of Standards for England (previously the 'Local Government Standards Board for England');

¹ For a brief history of standards regimes before 2000, see House of Commons Standards Committee, [The standards system in the House of Commons](#), HC-383 2014-15, 2015, pp73-86

² Committee on Standards in Public Life, [Standards of Conduct in Local Government in England, Scotland, and Wales](#) (3rd report, Cm.3072, July 1997), Vol.1

³ A model code of conduct was established in secondary legislation: see the [Local Authorities \(Model Code of Conduct\) Order 2007](#) (SI 2007/1159)

⁴ [Local Government and Public Involvement in Health Act 2007](#), s185

5 Local government standards in England

- Provision for the introduction of local codes of conduct and local responsibility for investigating alleged breaches of those codes. Local authorities were to establish a code, which was to be based on the seven 'Nolan principles' of public life (selflessness; integrity; objectivity; accountability; openness; honesty; leadership)⁵ and to specify sanctions for breaking it;
- Requirements for the registration and disclosure of pecuniary and other interests;
- Removal of the power to suspend councillors for breaches of a code of conduct;
- The creation of a criminal offence of failing to comply with the statutory requirements for disclosure of pecuniary interests.

The *Localism Bill* originally entirely removed the requirement for local councils to maintain a code of conduct, intending to make it a voluntary matter. The provisions in the Act were introduced in the House of Lords.

The 2012 changes apply to codes of conduct for councillors, not to those for local authority staff. There is no national code of conduct for local authority staff in England, though many councils operate their own codes of conduct for staff. A power existed in section 82 of the [Local Government Act 2000](#) to introduce a national code of conduct for local authority employees. However, no such code was ever introduced. The power was repealed by Schedule 4 paragraph 49 of the [Localism Act 2011](#).

Statutory codes of conduct for local authority staff do exist in Scotland, Wales and Northern Ireland: these must be adopted by councils in those areas.⁶

1.3 CSPL report 2019

The Committee on Standards in Public Life undertook an investigation into [local government ethical standards](#), which reported in January 2019.

This investigation took place in the wake of expressions of concern regarding the current standards regime from within the local government sector. Dame Louise Casey suggested in December 2016 that the Coalition Government "threw out the baby with the bath water in terms of standards in local authorities" when abolishing the Standards Board.⁷ A Local Government Chronicle survey in mid-2017 found that 60% of 235 monitoring officers responding did not believe that sufficient tools were available to them to deal with allegations of improper behaviour.⁸

⁵ See the [Localism Act 2011](#), s. 28 (1)

⁶ See Northern Ireland Local Government Staff Commission, [Code of Conduct for Local Government Employees](#), 2004; the [Code of Conduct \(Qualifying Local Government Employees\) \(Wales\) Order 2001](#) (SI 2001/2280); [National Code of Conduct for Local Government Employees in Scotland](#), 2010.

⁷ Jon Bunn, "[Casey interview: monitoring officers have been 'emasculated'](#)", *Local Government Chronicle*, 7 December 2016

⁸ Rachel Dalton, "[Legal staff call for stronger sanctions to tackle councillor misconduct](#)", *Local Government Chronicle*, 7 July 2017

The report made 26 recommendations for changes to the English standards regime, and to ancillary matters such as the Local Government Transparency Code. Amongst these were:

- The report did not favour a return to a pan-England system as existed before 2012. However, it recommended that the LGA should draft a new model code of local government conduct. This should cover matters such as social media use and bullying and harassment, which the report claimed are not adequately addressed by some authorities' codes of conduct at present;
- There should be a presumption that councillors' public behaviour takes place in their official capacity:

...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.⁹
- The categories of interest to be declared should be replaced with an 'objective test', following practice in Wales and Scotland. The 'objective test' in Wales, which the report recommends, is that an interest should be declared "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".¹⁰ Councillors should also be obliged to register gifts and hospitality: this currently features in some codes of conduct, but it is not universal;
- Local authorities should be able to suspend councillors for up to six months, provided that the statutory independent person (see section 3.2) agrees with the decision. Suspended councillors should have a right of appeal to the Local Government Ombudsman. However, the report opposed introducing a power to disqualify councillors;
- The criminal offence of failing to declare a pecuniary interest should be abolished;
- Parish councils should be required to adopt the code of conduct of their principal authority, and there should be greater support for district and unitary authority officials dealing with parish council standards matters.

The report also stressed the importance of underpinning specific recommendations with an ethical culture:

Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups... 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...¹¹

⁹ CSPL, [Local Government Ethical Standards](#), January 2019, p39

¹⁰ CSPL, [Local Government Ethical Standards](#), January 2019, p50

¹¹ Ibid., p12

7 Local government standards in England

In its submission to the CSPL's consultation during the review, the Local Government Association made mention of the subject of councillor harassment:

24. It is unacceptable that councillors should be subjected to personal attacks and a robust response to all forms of abuse is required at every level – from council officers; councils corporately; the police and Crown Prosecution Service (CPS). Additionally, internet and social media providers who provide platforms for much of this abuse should also be required to take action to address this.

25. However, there appears currently to be a mixed response to this issue in different places. While some councils have reported that their local police forces take this very seriously, in other areas there seems almost to be a view that such abuse is part and parcel of being an elected official.¹²

This was discussed in the CSPL report, which consequently recommended that the requirement for election candidates' home addresses to be made public should be ended.¹³

¹² See LGA, [LGA response to the Committee on Standards in Public Life consultation - Review of local government ethical standards](#), May 2018

¹³ CSPL, [Local Government Ethical Standards](#), January 2019, p37

2. Codes of conduct

2.1 Drawing up codes of conduct

Section 27 of the *Localism Act 2011* requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person' to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code. Since 2011, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils (NALC).¹⁴

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They may choose to opt in to the code of conduct adopted by their principal authority (the local district or unitary council).¹⁵

Co-opted members of local authorities are covered by local codes of conduct in the same way as elected members.

2.2 How interests must be registered

Councillors must register and disclose relevant pecuniary interests when elected. Schedule 2 of the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#) lists the disclosable pecuniary interests specified for the purposes of the Act.

Councillors must notify the monitoring officer of their local authority of any disclosable pecuniary interests, within 28 days of taking up office. The requirement to disclose pecuniary interests applies to co-opted members as well as to elected ones. Any interests must also be disclosed at a meeting of the council if they are relevant to the matters under discussion.

Authorities must maintain a register of councillors' pecuniary interests, and publish it. Registered interests may be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family.

The requirements to register interests apply to either an interest of the member or an interest of the member's spouse, civil partner or partner. However, guidance issued by DCLG states that the member does not have to differentiate between their own or their spouse/civil partner/partners interests or to name them:

Does my spouse's or civil partner's name need to appear on the register of interests?

¹⁴ See [Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity](#), DCLG, 11 April 2012; [New code of conduct for parish and town councils](#), NALC media release, 20 June 2012; LGA, [New standards for councillors](#), 12 April 2012

¹⁵ See the *Localism Act 2011*, section 27 (3)

No. 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.¹⁶

2.3 Dispensations

Councillors may apply to the council for a 'dispensation' to allow them to take part in a debate from which they would otherwise be debarred by the nature of their pecuniary interests. A dispensation may be granted for any reason, but the Act specifies a number of scenarios in which this may be done: this includes so many councillors having interests that the meeting cannot proceed, or the political balance of the meeting being substantially affected. A dispensation may last for a maximum of four years.

Guidance published in September 2013 clarified that owning a property in the local authority area does not constitute a disclosable pecuniary interest for the purposes of setting council tax.¹⁷ Councillors owning property in the council area would be expected to declare this as an interest, but it is not a disclosable pecuniary interest. Therefore a councillor is not prevented from taking part in a debate on that issue, nor would they need to seek a dispensation from the council to take part. Nevertheless, some councils have granted four-year dispensations on this point, to ensure compliance with the 2011 Act.

¹⁶ DCLG, [Openness and transparency on personal interests: A guide for councillors](#), 2012, p4

¹⁷ DCLG, [Openness and transparency on personal interests](#), September 2013, p. 7-8

3. Complaints about breaches of codes of conduct

3.1 Investigating alleged breaches

The 2011 Act requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the code of conduct, and arrangements under which decisions on allegation may be made. The Act removed the statutory requirement for local authorities to have a standards committee, found in the previous regime, although authorities are free to set one up.

If either a complainant, or the councillor against whom a complaint has been made, is unhappy with the way in which the local authority resolves the complaint, there is no higher authority to which they may appeal. The Local Government Ombudsman nor the Department for Communities and Local Government do not investigate complaints in respect of councillors' conduct or registration of pecuniary interests. The Ombudsman can investigate a complaint about a local authority's handling of a complaint about conduct, but it cannot re-investigate the original complaint itself.¹⁸

The powers of the local authority can include censure or the removal of a member from a committee, but the authority cannot disqualify or suspend councillors. Standards for England was able to suspend councillors under the previous regime from the 2000 Act. Some councils have used more creative approaches, such as banning councillors from council offices except for attending meetings of the council, or preventing them from contacting certain officers.

3.2 The independent person

Local authorities must appoint at least one 'independent person' to advise the council before it makes a decision on an allegation.¹⁹ The independent person cannot be a councillor or officer, or a relative or close friend of one.²⁰ The independent person must be consulted by the authority if an allegation received, and may be consulted by a councillor who is the subject of an allegation. Individual authorities are to determine the independent person's role within their local standards regime.

3.3 Sanctions

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence. This applies

¹⁸ See the Local Government Ombudsman's [response to the 2019 CSPL report](#).

¹⁹ See section 28 (7) of the 2011 Act.

²⁰ The *Localism Act 2011* defines the term 'relative' (see section 28 (10)), but not the term 'close friend'.

11 Local government standards in England

only to *pecuniary* interests, not to any breaches of the other elements of a code of conduct.

Either offence is punishable by a fine of up to level 5 (currently an unlimited amount), and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution must be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.²¹

²¹ One case has been brought under these provisions: see "Councillor first to be convicted of Localism Act pecuniary interest offence", [Local Government Lawyer](#), 1 April 2015.

4. Standards regimes in devolved areas

4.1 Scotland

Local government standards in Scotland are governed by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This Act applies a series of ethical standards to local councillors and the board members of specified public bodies. The standards are based on the 'Nolan principles' (see section 1.1) and are applied by the [Commissioner for Ethical Standards in Public Life in Scotland](#) (the CES). The CES reports on complaints to the Standards Commission for Scotland, who may then decide to hold a hearing and apply a sanction to the councillor if appropriate. Sanctions may include suspending or disqualifying councillors.²²

The [latest edition of the Councillors' Code of Conduct](#) dates from 2010. It is published by the Standards Commission for Scotland. It covers matters such as relations with council staff, dealing with gifts and hospitality, use of council facilities, and registration of interests. Employment, ownership of property, directorships and contracts, shares, election expenses and non-financial interests must be registered with the local authority.

As in England, a dispensation may be granted to councillors to speak and vote in meetings when they have pecuniary interests in the matter under discussion. Applications for dispensations must be made to the Standards Commission.

4.2 Wales

The Public Services Ombudsman for Wales (PSOW) was established in 2004-5. It took on the power to investigate complaints against councillors in Wales from the Local Government Ombudsman.

Councillors in Wales are required to comply with the model code of conduct set out in the Schedule to the [Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#) (SI 2008/788), as amended by the [Local Authorities \(Model Code of Conduct\) \(Wales\) \(Amendment\) Order 2016](#) (SI 2016/84).

Guidance on the Code is issued by the Public Services Ombudsman for Wales.²³ Potential breaches of the Code include bullying and harassment, disclosing confidential information, making improper use of the office of councillor, and failing to reach decisions objectively.

²² The relevant legislation is the [Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#).

²³ Public Services Ombudsman for Wales, [The Code of Conduct for members of local authorities in Wales](#), 2016

13 Local government standards in England

Dispensations to speak at meetings where a councillor has a prejudicial interest must be applied for from local authority standards committees.²⁴

The Code requires the registration of interests with the councillor's local authority. Local authority standards committees have powers to censure or suspend members who are found to have breached the code of conduct. In more serious cases, the Adjudication Panel for Wales may suspend or disqualify a member from holding office. A case in 2014, *Heesom v PSOW*, covered a number of points regarding the power to suspend or disqualify and the interaction of these provisions with human rights legislation.²⁵

4.3 Northern Ireland

The [Local Government Act \(Northern Ireland\) 2014](#) permits the Northern Ireland Executive to issue a code of conduct, to be monitored by the Northern Ireland Ombudsman. The initial Code [was issued in May 2014](#). The code includes 12 principles of conduct and a number of rules. Complaints of breaches to the Code must be made to the Northern Ireland Commissioner for Complaints, who has produced [guidance for councillors](#) on interpretation of the Code. The Commissioner may suspend or disqualify a councillor found to have breached the code. S/he may also make recommendations to the local authority in question.

Potential breaches of the Code include improper use of the councillor's position, improper use of council resources, and the failure to register gifts. The Code also requires local authority chief executives to ensure that a register of members' interests is maintained. Interests which must be registered include property owned, interests in companies, any remuneration, and any position of responsibility. A dispensation can be granted by the Northern Ireland Department of the Environment to allow councillors to speak in meetings where their interests would otherwise prevent them from doing so.

²⁴ Ibid., p. 35

²⁵ See the account of the case, plus a link to the judgment, on [the website of Bindman and Partners](#).

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