

ADSO Webinar - Code of Conduct

7 August 2020

Questions & Answers

1. Oh.... unlawful for Indy person doing investigation....

The Localism Act is very clear on the role of the Independent Person. They are there to give their views on matters under investigation and give their views to the subject member as required. So their role is not to undertake investigations. They may also advise the MO or Council prior to any decision to investigate an allegation or complaint relating to whether a member has failed to comply with the Code of Conduct.

The draft procedure produced by the LGA has misunderstood this and therefore does not comply with legislation. It was not written by Hoey Ainscough Associates and they have made this point to the LGA.

2. Will the slides / any questions submitted not answered be circulated to participants after the webinar concludes?

Yes. They will be made available on the ADSO Website.

3. Have you heard of any occasions where standards complaints are not investigated when say auditors or police are involved? Will there be guidance?

There have been instances where a standards investigation has been deferred pending the completion of a police enquiry. Similarly, we have known the police to defer a case to await the outcome of the standards investigation. We would encourage there to be a local protocol in place with other regulatory agencies about how such situations might be handled.

4. Will the guidance address the issues of standards investigations processes?

There have been no decisions taken yet as to whether there will be any national guidance or if so, who would produce it but ADSO would be supportive of any guidance being produced and would want to have an input into its contents. This would be one of the areas we would want to be considered.

5. Without proper sanctions on issues like mandatory training, will work on developing a new code be a waste of time?

No, we don't think it is a waste of time. The new model code will hopefully bring more consistency and clarity particularly across multi-tiered authorities. We all agree that meaningful sanctions are required and ADSO plus our partners will continue to lobby for them to be introduced.

6. There's mention that local councils should adopt the principal councils code. Referencing then the previous discussion on local additions tailored to local needs, how do you envisage this working for local councils.

It was a clear recommendation of the Committee on Standards in Public Life that as a minimum all councils within the same geographical area should have the same Code. Clearly that cannot be imposed without legislation but we support that recommendation to ensure consistency for members, officers and the public alike and so that MOs will always know against which Code a complaint needs to be judged. We would encourage you to work with your local County Associations to encourage uptake by local councils.

7. The Monitoring Officer in my authority indicated that this code would be the basis which local codes can build on.... which is unclear when the speaker says we need a common code for all levels, so no adaptation?

It is not a mandatory national code and cannot be without legislation. That means councils are not obliged adopt this code at all and keep their own local versions. But we are keen to encourage consistent standards across the country so would encourage adoption. There may be specific local protocols or rules councils want to add to reflect particular local circumstances but this code should be seen as the baseline

8. This code... is it expected that local additions will be added by Councils? Or are all Councils expected to adopt this and only this when finally agreed

ADSO argues that the model code should be the minimum standard adopted by all authorities. Local councils should adopt their principal councils code for consistency and clarity. However, that does not preclude local codes being added to (but not reduced), to provide for local circumstances.

9. How will / should the code be enforced?

The Code should be underpinned by quality training, refreshed on an annual basis and supported by robust procedures for investigating allegations of breaches. Good relationships between the MO (and his or her team) and members will help to promote the code and reduce the number of possible breaches of the code. The support of political parties

within local councils is important to raise the profile of adherence to the code by their members.

10. Will the code cover Officer / Cllr relationships? If not, should it?

The Code does cover this, including requirements to treat people with civility and not seeking to compromise the impartiality of officers. These are high-level rules. Most councils in addition have member/officer protocols to cover relationships in greater detail. We recommend that all such protocols are referred to in the Code with a requirement that they are complied with. A breach of those protocols could be a breach of the Code itself.

11. In terms of co-optees should there be a difference in terms of voting and non-voting co-optees? i.e. should both be required to sign up to the code or just voting co-optees?

Clearly, it is more of a priority for voting co-optees to sign up to the code because of their role in the decision-making process. However, it is good practice for all co-optees to be subject to the same code although legally it cannot be enforced as the Localism Act only makes a code mandatory for co-opted members with voting rights.

12. Acceptance of office if signed on election night it's silly they won't have had a chance to understand.

13. Sign code but only after training

We agree with the principle that councillors should only sign up to adhere to documents they understand. The same could be said for the acceptance of office form. It's good practice in our view to prepare potential councillors beforehand. There are examples of authorities offering briefings before the election and providing training on the code, the roles and responsibilities of a councillor, the resources available to councillors, the decision-making process and the allowances they will receive. This then informs potential councillors of what they are 'signing up for' and enables them to sign relevant forms as soon as possible after election – if not on the night itself. The main point in the webinar was that some Councils do not ask members to sign up to adhere to the Code. We think they should.

14. Can we have a comprehension test associated with the training. However good the training is if they don't listen or understand it is wasted.

Most DSOs and MOs would consider this a very good idea!

15. Publish training records, name and shame!

There is nothing to stop authorities recording member training records and making them publicly available, similar to meeting attendances.

16. Regarding independent persons on standards committees and processes should it be a requirement and will there be guidance on how they are involved and how often they are replaced.

Independent Persons in Localism Act terms are there to give their views on cases to authorities and authorities must have regard to those views. In our view it blurs the line of accountability if the IP is also a member of the standards committee as they are not there to be part of the formal decision-making and under the Localism Act cannot vote on matters at the committee. That does not stop you from co-opting other independent representatives onto a standards committee and can be helpful to 'dilute' the politics but that is a different role from the Localism Act IP and again they could not have voting rights. The Committee on Standards in Public Life has recommended to Government that authorities should be able to have voting independent members of standards committees if they so wish locally but again that would need legislative change.

17. There's potentially a legal question on whether councils can make training mandatory for Councillors.

18. Agree that it should be a requirement for members to sign up to the code, and to undertake mandatory training but how can we enforce and what do you see as the sanctions being for not signing/not attending training?

This answer covers both 17 & 18 above. Many councils already make training mandatory for members wishing to serve on Planning & Licensing Committees. It is within a council's gift as to who sits on what committee hence it is enforced that way. We agree that mandatory training on the code would be more difficult to enforce as a councillor cannot be removed from the Council if they refuse but a presumption that training must be undertaken can work with the right culture within the authority and the support of the leadership and political parties.

19. Interested to know if there is an official definition of 'family', ie sibling, parent, half brother, uncle, cousin etc etc

Not that we are aware. Council's vary in how widely they define 'family' within their codes. This may be picked up by any guidance.

20. One of the main issues is always around enforcement and meaningful sanctions. Has any thought been given to what these could look like?

Prior to the Localism Act 2011, councillors could be suspended and disqualified in the most severe cases of breaches of the code of conduct. That gave the code some teeth and served as a deterrent. These options should in our view be re-introduced but that needs the Government to legislate.

21. Within the report by the CSPL there are two areas of best practice - one that Councils should publish decision notices at the end of an official investigation and another that Local Authorities should review their code on an annual basis. Would it be possible that there is a central repository of the decision notices that are published that could be utilised by Council's when reviewing their codes? This would allow Council's to update their code by reflecting upon real cases. The repository could then also be used by bodies such as the LGA and ADSO to review the model code and its effectiveness going forward.

This service was provided by the former Standards Board for England who kept a compendium of cases and published them on an annual basis. Whilst we think it would be very helpful to authorities and relevant professional bodies, the problem with doing so now is who would fulfil that role and how would it be resourced?

22. Re John saying the code applies to officers.... well where does it say that? Nothing I have seen says it applies to anything other than Cllrs... 'officers' are not referred to are they? They bully etc Cllrs and others.

Apologies for any confusion. John did not mean that the code applied to officers. They clearly have their own code. What he meant was although the code is intended to be a contract between the council and the member, it also is of relevance to officers and the public - for example when there are complaints about alleged breaches. John's point was that the code therefore has to be relevant and understood by those people as well as members.

23. to Paul please - your recommendations include some things which follow the recommendations of the CSPL in brackets that require

Yes. Certain things especially around when the Code applies need primary legislation. But we and the LGA think they are sensible recommendations so want to make sure pressure is kept up on Government to legislate and hence bring those aspects of the Code into force.

24. Personal, and Personal and Prejudicial, interests are useful terms and more easily understood than Non-pecuniary interests of sufficient weight that an ordinary person would consider that you can't make a decision objectively.

The term 'Disclosable Pecuniary Interest' has to be used by law. Other interests in the Code are simply referred to as financial interests or wellbeing.

25. Is there any indication that legislative changes are likely to be forthcoming to enable the recommendations in the CSPL report?

Not at the moment. The Government has not yet responded to the CSPL recommendations despite reminders.