

Committee on Standards in Public Life (CSPL)
Local government ethical standards review
1 Horse Guards Road
London
SW1A 2HQ

By email to: public@public-standards.gov.uk

08 May 2018

Dear colleague,

Local Government and Social Care Ombudsman's response to CSPL's Local government ethical standards review

About the Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services.

We welcome the opportunity to respond to CSPL's consultation as part of its review of local government ethical standards. The committee's review provides an important opportunity to evaluate how the current standards framework is operating and identify areas where it may need to be strengthened. We are responding to this consultation due to our existing role in considering some complaints about standards and conduct issues, which we have set out below.

Summary of key points

- We support the view expressed in the consultation document that robust standards arrangements are needed to safeguard local democracy and maintain the high standards of conduct which the public expect.
- The committee's review provides a timely opportunity to consider the need to give members of the public who wish to complain about the conduct of a councillor, access to independent redress to an ombudsman, where it has not been possible for these issues to be resolved locally.

- A right to impartial, independent redress for complaints about allegations of misconduct by councillors already exists in both Wales and Northern Ireland. Creating an avenue of independent redress in England would bring greater alignment with the other devolved jurisdictions.
- Most complaints about local councils fall under our existing jurisdiction. We have the necessary expertise to investigate complaints about potential breaches of standards of conduct and could do so if our jurisdiction was extended and we were appropriately funded for this work.

Our existing role in considering complaints about standards and conduct

As our role currently stands, if a member of the public is dissatisfied with the council's handling of a complaint about alleged breaches of standards of conduct they can refer that issue to us. 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.

Only a relatively low number of complaints about standards and conduct issues reach us. Below we have provided details of the volume of complaints and investigations we have carried out since 2012:

Complaints about standards and conduct issues	2012-13	2013-14	2014-15	2015-16	2016-17
Number of complaints and enquiries received	124	111	123	123	174
Number of complaints and enquiries decided	121	119	124	120	169
Complaints closed after initial enquiries	71	69	76	68	99
Number of detailed investigations	16	28	9	11	19
Proportion of detailed investigations we upheld in favour of the complainant	19%	11%	22%	36%	32%

Some of the common issues we see in our investigations include:

- 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.

If we find there has been fault in the way the council has dealt with a complaint, we can ask the council to carry out its investigation if there has been a delay, re-investigate a complaint if the investigation has not been carried out correctly in accordance with the council's own

procedures or improve its procedures to prevent the same problems from reoccurring in the future.

Examples of some recent complaints we have considered are outlined below. We publish all our decisions on [our website](#), unless we have concerns that to do so could compromise the anonymity of the people using our service. The case summaries referenced here include links to the full decision statements for further detail.

Unreasonable delay ([16 018 509](#)):

Mr B complained about the conduct of a councillor which he said was in breach of the code of conduct. Our investigation found fault as the council's response to Mr B's complaint about the councillor was significantly delayed without good reason. The council's complaints procedure stated a response should normally be provided within 28 days, but Mr. B had to wait over six months to receive a reply. There was nothing in the complaint or in the information provided by the council which explained why there was such a delay in dealing with Mr. B's complaint. The council agreed to apologise to Mr B for the fault.

Independent person ([16 002 617](#)):

Mr X complained to the council about a councillor who he believed broke the code of conduct. The Monitoring Officer and Independent person considered Mr X's complaint at the preliminary assessment stage and decided there was no evidence the councillor's conduct was a breach of the code of conduct. Mr X was unhappy with the way the council considered his complaint. He especially considered the Independent Person did not disclose to the council he had previously worked with Mr X and that they were not on good terms.

The Independent Person advised the Monitoring Officer they knew someone with the same name as Mr X and asked them to clarify if it was the same person. However, due to an error the council failed to follow up on this. We found that this was fault. The council offered to appoint a different officer and Independent Person to consider Mr X's complaint which we agreed was an appropriate remedy.

Under section 25(4)(a) of the Local Government Act 1974, we can also investigate particular actions taken by councillors – examples of such actions include:

- actions in committee meetings, e.g. failure to declare an interest or providing misleading information
- acting as an executive member with decision-making powers
- giving a decision on an admin function they do not have the authority to give
- speaking on behalf of the council, for example at a public meeting explaining proposals for a new road scheme

- agreeing to pass on an objection to a planning application or undertaking to present a petition to committee but failing to do so
- giving wrong information to a constituent about when a particular matter is being considered by the council and the constituent misses the deadline for representations/objections.

Access to independent redress for complaints about alleged breaches of standards of conduct

We believe there is merit to consider, within the scope of the current review, the need to give the public greater access to independent redress in relation to complaints about the conduct of councillors, where it is not possible to resolve such complaints at a local level. If it is perceived there is a gap in the current system, we would support extending our role to be able to investigate the substantive detail of complaints about whether there has been a breach of standards of conduct, not only about the complaint handling process.

For the public to trust the arrangements for investigating complaints that a councillor may have breached standards of conduct, they need to feel reassured the system is both fair and rigorous. We consider that an independent means of redress could help strengthen transparency and deliver public confidence in the system. This would also improve consistency in how standards complaints are dealt with by mirroring arrangements that already exist in the other devolved jurisdictions. Unlike Wales or Northern Ireland, no equivalent route of redress to an independent ombudsman for these complaints currently exists in England.

The question of whether to create a right to independent redress for complaints about standards of conduct issues will ultimately be a matter for government and parliament to consider. That decision should be informed by an assessment of the effectiveness of the current standards framework and whether it is delivering the requisite level of fairness and independence so that public confidence in the system is upheld. There is also a question of parity in terms of whether the current system for local government satisfies the same standards of independence and impartiality as arrangements in other aspects of public life.

In our discussions with council link officers, it is clear there are concerns that the current sanctions at councils' disposal are not sufficient for the most serious breaches of conduct. In addition, there is limited scope for independent assessment beyond the role of the independent person, who can only act in an advisory capacity and does not determine whether there has been a breach. This suggests that the system could be better served by having an independent body consider allegations about breaches of conduct, particularly where they are related to serious cases.

The experience in both Wales and Northern Ireland demonstrates the benefits of conferring this role to the ombudsman. The Public Services Ombudsman for Wales (PSOW) can investigate complaints about councillors who may have failed to comply with standards of conduct, while in Northern Ireland this falls to the Local Government Commissioner for Standards which sits within the Northern Ireland Public Services Ombudsman's (NIPSO) remit.

Both PSOW and NIPSO take into account factors such as whether it is proportionate and in the public interest to conduct an investigation into an alleged breach. This ensures that only complaints that pass this threshold are investigated. Indeed, of all the complaints received by both ombudsman schemes, only a small proportion make their way through the entire process and in only a handful of cases sanctions are imposed. Considerations about whether complaints may be driven by vexatious or frivolous reasons are already part of our work, while not preventing complainants who are raising genuine concerns from accessing redress. Therefore, we would be well placed to filter out complaints that lack sufficient information or appear to be malicious or politically-motivated as we already do across all areas within our jurisdiction.

If the CSPL review was to recommend a potential extension to our jurisdiction which the government committed to implementing, we believe there are a number of conditions which would need to be satisfied:

- **Legislative change:** We consider we would be best placed to provide independent redress for complaints about alleged breaches of standards of conduct. An extension of our remit would be in keeping with our role as the final stage for redress for most local government complaints, but our legislation would need to be changed.
- **Scope of jurisdiction:** Any extension of our jurisdiction in relation to complaints about standards of conduct should only be pursued in line with Part III of the Local Government Act 1974 which sets out the types of authorities which fall within our jurisdiction. Specifically, our current jurisdiction does not extend to town and parish councils. We consider it would be neither practical nor appropriate to extend our jurisdiction to cover parish and town councils in one area in isolation, such as in relation to conduct issues.
- **Funding:** We are already funded below the level of any other public service ombudsman scheme and any additional responsibilities that we would acquire in relation to standards complaints should be properly resourced. Costs associated with the additional volume of complaints would need to be determined through an impact assessment and a corresponding increase in funding.
- **Code of conduct:** We consider that if we were to take on additional responsibilities in relation to such complaints this would require the re-introduction of a national code, so that every councillor could be held against the same standards. The approach in Northern Ireland provides a useful potential model where the code setting out the conduct expected of councillors is developed by the Executive and requires approval by the Assembly. The role of the ombudsman is confined to investigating and adjudicating on complaints about alleged breaches of conduct against the provisions of the code.
- **Local routes of redress:** Our experience from across our jurisdiction is that a quick, appropriate response from the organisation the complaint is about is often the most effective and swift way to remedy concerns. We would expect the ombudsman to remain at the apex of the complaints system and for complaints about potential breaches of standards of conduct to be brought to the ombudsman only after local routes for resolution have been exhausted.

- **Approach to complaints:** If our remit was extended, we would wish to investigate allegations about breaches of standards of conduct in the same way as all other types of complaints within our existing jurisdiction. This would include broad discretion to determine whether or not a complaint merits investigation or to initiate an investigation. On completion of an investigation, we would also wish to see the current approach replicated where our findings are not legally binding on the council concerned. Where we are not satisfied with a response to one of our reports, we may issue a further report. If an authority fails to comply with recommendations in a further report, we can require the council to publish a statement drawing attention to that failure.

Conclusion

It is right that any decision about extending the right to independent redress is made within the context of the review's findings overall about how well the current framework for standards is working. We would be keen to work with the committee and government to further explore providing independent consideration of complaints about alleged breaches of standards where such complaints are not resolved locally, and would welcome the opportunity for further discussions.

We hope our submission is helpful and happy to further assist the committee with its review and provide any further information or clarification, as required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. King', with a stylized flourish at the end.

Mr Michael King
Local Government and Social Care Ombudsman