1. Background: Standards and Conduct framework and sanctions arrangements

The Localism Act 2011

(<u>http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted</u>)[footnote 1] established the current standards and conduct framework for local authorities.

The current regime requires every local authority to adopt a code of conduct, the contents of which must as a minimum be consistent with the 7 <u>Nolan' principles of standards in public life</u>

(https://www.gov.uk/government/publications/the-7-principles-of-public-life) (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and set out rules on requiring members to register and disclose pecuniary and nonpecuniary interests. Beyond these requirements, it is for individual councils to set their own local code. The Local Government Association (LGA) published an <u>updated model</u> <u>code of conduct and guidance (https://www.local.gov.uk/publications/local-governmentassociation- model-councillor-code-conduct-2020</u>) in 2021, which councils can choose whether to adopt or not.

Every authority must also have in place arrangements under which it can investigate allegations of breaches of its code of conduct and must consult at least one independent person before coming to decisions. These decisions are normally taken in one of two ways depending on an authority's specific arrangements. The decision can be made by full council following advice from their standards committee (or equivalent). Alternatively, the decision can be made by the standards committee if they have been given the power to do so. Although a standards committee may contain unelected independent members and co-opted members, only principal councils' elected members may vote in a decision-making standards committee.

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct. Sanctions for member code of conduct breaches are currently limited to less robust measures than suspension, such as barring members from Cabinet, Committee, or representative roles, a requirement to issue an apology or undergo code of conduct training, or public criticism. Local authorities are also unable to withhold allowances from members who commit serious breaches of their code of conduct, and there is no explicit provision inlegislation for councils to impose premises bans or facilities withdrawals where they consider that it might be beneficial to do so.

The government considers that the current local authority standards and conduct regime is in certain key aspects ineffectual, inconsistently applied, and lacking in adequate powers to effectively sanction members found in serious breach of their codes of conduct.

2. Who we would like to hear from

Responses are invited from local authority elected members and officers from all types and tiers of authorities, and local authority sector representative organisations. We are also particularly keen to hear from those members of the public who have point of view based on their interest in accessing local democracy in their area or standing as a candidate for local government at any tier to represent their local community at some future point.

Please be assured that all responses to this consultation are anonymous, and no information will be disclosed in any future published response to the consultation, or

reporting of the consultation results, that will compromise that anonymity.

reporting of the consultation results, that will co	
Question 1	Response 1
Please tick all that apply - are you responding to this consultation as:	a) Unitary Authority
 a) an elected member – if so please indicate which local authority type(s) you serve on 	
 Town or Parish Council District or Borough Council Unitary Authority County Council Combined Authority / Combined County Authority Fire and Rescue Authority Police and Crime Panel Other local authority type - please state 	b) NA
 b) a council officer – if so please indicate which local authority type 	
 Town or Parish Councillor Unitary Authority County Council Combined Authority / Combined County Authority Fire and Rescue Authority Police and Crime Panel Other local authority type - please state 	c) Unitary Authority
 c) a council body – if so please indicate which local authority type Town or Parish Council District or Borough Council Unitary Authority County Council Combined Authority / Combined County Authority Fire and Rescue Authority Police and Crime Panel Other local authority type - please state 	
d) a member of the public	

d) a member of the public

e) a local government sector body - please state

3. Strengthening the Standards and Conduct framework

a) Mandatory minimum prescribed code of conduct

The government proposes to legislate for the introduction of a mandatory minimum code of conduct which would seek to ensure a higher minimum standard of consistency in setting out the behaviours expected of elected members. The government will likely set out the mandatory code in regulations to allow flexibility to review and amend in future, this will also provide the opportunity for further consultation on the detail.

e)

Codes of conduct play an important role in prescribing and maintaining high standards of public service, integrity, transparency, and accountability. At their best, they establish clear guidelines for behaviour and expectations that members always act ethically in the public's best interest. Currently, there is significant variation between adopted codes,

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Appendix 1 ranging from those who choose to adopt the LGA's full model code to those who simply conform with the minimum requirement of restating the Nolan principles.

A prescribed model code which covers important issues such as discrimination, bullying, and harassment, social media use, public conduct when claiming to represent the council, and use of authority resources could help to uphold consistently high standards of public service in councils across the country and convey the privileged position of public office. It could also provide clarity for the public on the consistent baseline of ethical behaviour they have a right to expect.

We would be interested in understanding whether councils consider there should be flexibility to add to the prescribed code to reflect individual authorities' circumstances. They would not be able to amend the mandatory provisions.

Question 2	Response 2
Do you think the government should prescribe a mandatory minimum code of conduct for local authorities in England?	Yes to ensure an element of consistency across the country
 Yes No If no, why not? [Free text box to the right] 	
Question 3	Response 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 , there may particular local circumstances that warrant bespoke clauses.
 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 	
Question 4	Response 4 Yes but only if there is a
Do you think the government should set out a code of conduct requirement for members to cooperate with investigations into code breaches?	corresponding sanction for non cooperation.
YesNoUnsure	

b) Standards Committees

Currently, there is no requirement for local authorities to constitute a formal standards committee. The only legal requirement is for local authorities to have in place 'arrangements' to investigate and make decisions on allegations of misconduct.

The government believes that all principal authorities should be required to convene a standards committee. Formal standards committees would support consistency in the handling of misconduct allegations, applying the same standards and procedures to all cases and providing a formal route to swiftly identify and address vexatious complainants. Furthermore, having a formal standards committee in place could support the development of expertise in handling allegations of misconduct, leading to more informed decision-making. Removing the scope for less formal and more ad hoc arrangements would also enhance transparency and demonstrate to the public that

Appendix 1 standards and conduct issues will always be dealt with in a structured and consistent way.

This section of the consultation seeks views on two specific proposals to enhance the fairness and objectivity of the standards committee process. Firstly, it considers whether standards committee membership would be required to include at least one Independent

Person, as well as (where applicable [footnote 2]) at least one co-opted member from a parish or town council. Secondly, it seeks views on whether standards committees should be chaired by the Independent Person.

Question 5	Response 5
Does your local authority currently maintain a standards committee? • Yes • No • Any further comments	Yes
Question 6	Response 6
 Should all principal authorities be required to form a standards committee? Yes No Any further comments 	Yes
Question 7	Response 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	Yes
 No, local authorities should have discretion to allow decisions to be taken by full council Unsure 	
 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 	Response 8 Yes
Question 9 Should standards committees be chaired by the Independent Person? • Yes • No • Unsure	Response 9 Yes, perhaps even that misconduct hearings have a majority of independent members.
Question 10 If you have further views on ensuring fairness and objectivity and reducing incidences of vexatious complaints, please use the text box on the right,	Response 10 To be discussed.

c) Publishing investigation outcomes

To enhance transparency, local authorities should, subject to data protection obligations, be required to publish a summary of code of conduct allegations, and any investigations and decisions. This will be accompanied with strong mechanisms to protect victims' identity to ensure complainants are not dissuaded from coming forward for fear of being identified,

There may be a range of views on this, as publishing the outcome of an investigation that proves there is no case to answer could still be considered damaging to the reputation of the individuals concerned, or it could be considered as helpful in exposing instances of petty and vexatious complaints.

 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 	 Response 11 We currently provide an annual summary to the "standards committee" without identifying the parties. A more consistent approach across the sector would be welcomed; Where there is no case to answer a summary of the allegations and reasoning for no investigation but not naming of parties, Where action short of investigation is adopted, a summary of the allegations, outcomes and the parties ought to be named
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d) Requiring the completion of investigations if a member stands down

In circumstances where a member stands down during a live code of conduct investigation, councils should be required to conclude that investigation and publish the findings. The government is proposing this measure to ensure that, whilst the member in question will no longer be in office and therefore subject to any council sanction, for the purposes of accountability and transparency there will still be full record of any code of conduct breaches during their term of office.

Question 12	Response 12
Should investigations into the conduct of members who stand down before a decision continue to their conclusion, and the findings be published?	Yes, it would help to build confidence in the public and that justice cannot be avoided by stepping down.
 Yes No Unsure 	

e) Empowering individuals affected by councillor misconduct to come forward

The government appreciates that it can often be difficult for those who experience misconduct on the part of elected members, such as bullying and harassment, to feel that it is safe and worthwhile to come forward and raise their concerns. If individuals believe there is a likelihood that their complaint will not be addressed or handled appropriately, the risk is that victims will not feel empowered to come forward, meaning misconduct continues without action. We recognise that standing up to instances of misconduct takes an emotional toll, particularly in unacceptable situations where the complaints processes are protracted and do not result in meaningful action. We are committed to ensuring that those affected by misconduct are supported in the right way and feel empowered to come forward. This section seeks feedback from local authorities with experience of overseeing council complaints procedures, or sector bodies and individuals with views on how this might be carried out most effectively. We are also keen to hear from those who work, or have worked, in local government, and who have either witnessed, or been the victim of, member misconduct.

	Appendix 1
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?	Response 13 Average over the last three years has been 8 complaints
Question 13a	Response 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 Complaints made by other elected members Complaints made by the public Complaints made by any other source 	During the same three year period: Members – 13% Officers – 0% Public – 87% Other – 0%
Question 14	Response 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	NA
Question 15	Response 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?	To be discussed
YesNo	
Question 16	Response 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?	To be discussed
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	Response 17 To be discussed

4. Introducing the power of suspension with related safeguards

The government believes that local authorities should have the power to suspend councillors for serious code of conduct breaches for a maximum of 6 months, with the option to withhold allowances and institute premises and facilities bans where deemed appropriate. This section of the consultation explores these proposed provisions in greater detail.

While the law disqualifies certain people from being, or standing for election as, a councillor (e.g. on the grounds of bankruptcy, or receipt of a custodial sentence of 3 months or more, or it subject to the notification requirements of the Sexual Offences Act 2003 - meaning on the sex offenders register) councillors cannot currently be suspended or disqualified for breaching their code of conduct.

Feedback from the local government sector in the years since the removal of the power to suspend councillors has indicated that the current lack of meaningful sanctions means local authorities have no effective way of dealing with more serious examples of member misconduct.

The most severe sanctions currently used, such as formally censuring members, removing them from committees or representative roles, and requiring them to undergo training, may prove ineffective in the cases of more serious and disruptive misconduct. This may particularly be the case when it comes to tackling repeat offenders.

The government recognises that it is only a small minority of members who behave badly, but the misconduct of this small minority can have a disproportionately negative impact on the smooth running of councils. We also appreciate the frustration members of the public and councillors can feel both in the inability to deal decisively with cases of misconduct, and the fact that offending members can continue to draw allowances.

 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 	Response 18 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 	Response 19 Yes , it would allow for local politicians to uphold high standards locally, show their moral compass and for the Standards Committee to have some authority.

	Appendix 1
Question 20	Response 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?	No. It should be matter for local political groups to organise themselves, although this would be more difficult in single member wards.
 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 	

a) The length of suspension

The Committee on Standards in Public Life recommended in their 2019 Local

Government Ethical Standards^[footnote 3] (CSPL) report that the maximum length of suspension, without allowances, should be 6 months and the government agrees with this approach. The intent of this proposal would be that non-attendance at council meetings during a period of suspension would be disregarded for the purposes of section 85 of the Local Government Act 1972, which states that a councillor ceases to be a member of the local authority if they fail to attend council meetings for 6 consecutive months.

The government believes that suspension for the full 6 months should be reserved for only the most serious breaches of the code of conduct, and considers that there should be no minimum length of suspension to facilitate the proportionate application of this strengthened sanction.

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 	Response 21 Yes – 6 months
Question 22	Response 22
If yes, how frequently do you consider councils would be likely to make use of the maximum length of suspension?	Infrequently
 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 breachesUnsure	

a) Withholding allowances and premises and facilities bans

Giving councils the discretion to withhold allowances from members who have been suspended for serious code of conduct breaches in cases where they feel it is appropriate to do so could act as a further deterrent against unethical behaviour. Holding councillors financially accountable during suspensions also reflects a commitment to ethical governance, the highest standards of public service, and value for money for local residents.

Granting local authorities the power in legislation to ban suspended councillors from local authority premises and from using council equipment and facilities could be beneficial in cases of behavioural or financial misconduct, ensuring that suspended councillors do not misuse resources or continue egregious behaviour. Additionally, it would demonstrate that allegations of serious misconduct are handled appropriately, preserving trust in public service and responsible stewardship of public assets.

These measures may not always be appropriate and should not be tied to the sanction of suspension by default. The government also recognises that there may be instances in which one or both of these sanctions is appropriate but suspension is not. It is therefore proposed that both the power to withhold allowances and premises and facilities bans represent standalone sanctions in their own right.

Question 23	Response 23
Should local authorities have the power to withhold allowances from suspended councillors in cases where they deem it appropriate?	Yes , members receive an allowance for the performance of duties of a public office. If they are suspended they are
 Yes – councils should have the option to withhold allowances from suspended councillors No – suspended councillors should continue to receive allowances Unsure 	unable to undertake the duties of the office and in such circumstances suspension of allowances should follow automatically. There should be the power to suspend allowances as a standalone power too.
Question 24	Response 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.
 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 	
Question 25	Response 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, It provides as alternative sanction.
YesNoUnsure	

b) Interim suspension

Some investigations into serious code of conduct breaches may be complex and take time to conclude, and there may be circumstances when the misconduct that has led to the allegation is subsequently referred to the police to investigate. In such cases, the government proposes that there should be an additional power to impose interim suspensions whilst and until a serious or complex case under investigation is resolved.

A member subject to an interim suspension would not be permitted to participate in any council business or meetings, with an option to include a premises and facilities ban.

We consider that members should continue to receive allowances whilst on interim suspension and until an investigation proves beyond doubt that a serious code of conduct breach has occurred or a criminal investigation concludes. The decision to impose an interim suspension would not represent a pre-judgement of the validity of an allegation.

We suggest that:

- Interim suspensions should initially be for up to a maximum of 3 months. After the expiry of an initial interim suspension period, the relevant council's standards committee should review the case to decide whether it is in the public interest to extend.
- As appropriate, the period of time spent on interim suspension may be deducted from the period of suspension a standards committee imposes.

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 	Response 26 Yes , but there needs to safeguards to avoid it becoming a de facto sanction whilst the matter is being investigated.
Question 27	Response 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 	Yes , see above
Question 28	Response 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?	There needs to be regular reviews and a maximum length to encourage investigations to be completed with due diligence.

	Appendix 1
Question 29	Response 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 	I would suggest subject to monthly review
Question 30	Response 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 	There needs to be a maximum length of suspension and subject to regular periodic reviews
trusted to act responsibly	
Question 30a	Response 30a
If you answered yes to above question, what safeguards do you think might be needed to ensure that unlimited suspension is not misused?	 Maximum period of suspension Periodic review Councillors right to make representations

c) Disqualification for multiple breaches and gross misconduct

When councillors repeatedly breach codes of conduct, it undermines the integrity of the council and erodes public confidence. To curb the risk of repeat offending and continued misconduct once councillors return from a suspension, the government considers that it may be beneficial to introduce disqualification for a period of 5 years for those members for whom the sanction of suspension is invoked on more than one occasion within a 5-year period.

This measure underlines the government's view that the sanction of suspension should only be used in the most serious code of conduct breaches, because in effect a decision to suspend more than once in a 5- year period would be a decision to disqualify an elected member. However, we consider this measure would enable councils to signal in the strongest terms that repeated instances of misconduct will not be tolerated and would act as a strong deterrent against the worst kind of behaviours becoming embedded.

Currently a person is disqualified if they have been convicted of any offence and have received a sentence of imprisonment (suspended or not) for a period of 3 months or more (without the option of a fine) in the 5-year period before the relevant election. Disqualification also covers sexual offences, even if they do not result in a custodial or suspended sentence.

Question 31 Do you think councillors should be disqualified if subject to suspension more than once?	Response 31 Yes , 5 years feels about right and covers two terms of office
 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 	
Question 32	Response 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?	No, we should stick to the principle of innocent until proven guilty.
YesNoUnsure	

d) Appeals

The government proposes that:

- A right of appeal be introduced for any member subject to a decision to suspend them.
- Members should only be able to appeal any given decision to suspend them once.
- An appeal should be invoked within 5 working days of the notification of suspension; and
- Following receipt of a request for appeal, arrangements should be made to conduct the appeal hearing within 28 working days.

The government believes that were the sanction of suspension to be introduced (and potentially disqualification if a decision to suspend occurs a second time within a 5-year period) it would be essential for such a punitive measure to be underpinned by a fair appeals process.

A right of appeal would allow members to challenge decisions that they believe are unjust or disproportionate and provides a safeguard to ensure that the sanction of suspension is applied fairly and consistently.

We consider that it would be appropriate to either create a national body, or to vest the appeals function in an existing appropriate national body, and views on the merits of that are sought at questions 38 and 39 below. Firstly, the following questions test opinion on the principle of providing a mechanism for appeal

 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 	Response 33 Yes.
Question 34	Response 34
Should suspended members have to make their appeal within a set timeframe?	Yes but 5 days is too short, this will simply encourage all to appeal. 10 working days is sufficient, balancing the need for consideration and reflection, but not dragging the process on for too long.
 Yes – within 5 days of the decision is appropriate to ensure an efficient process Yes – but within a different length of time (in days) [insert number to the right] No – there should be no time limit for appealing a decision 	

The government is also keen to explore if a right of appeal should be provided, either in relation to whether a complaint proceeds to full investigation and consideration by the standards committee, or where a claimant is dissatisfied with the determination of the standards committee.

 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 	Response 35 No. most complaints that fall at the initial screening process are frivolous, tit for tat or trivial.
 Question 36 Do you consider that a complainant should have a right of appeal when an allegation of misconduct is not upheld? Yes No Question 37 If you answered yes to either of the previous two provides the first the right. 	Response 36 No. Response 37 n/a
questions, please use the free text box to the right to share views on what you think is the most suitable route of appeal for either or both situations.	

b) Potential for a national appeals body

Appendix 1 There is a need to consider whether appeals panels should be in-house within local authorities, or whether it is right that this responsibility sits with an independent national body. Whereas an in-house appeals process would potentially enable quicker resolutions by virtue of a smaller caseload, empowering a national body to oversee appeals from suspended members and complainants could reinforce transparency and impartiality and help to ensure consistency of decision-making throughout England, setting precedents for the types of cases that are heard.

 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 	Response 38 Yes but only on the most serious matters, i.e. where a suspension is imposed
 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 	Response 39 Yes , to consider appeals to a suspension or the consideration of a disqualification order.

5. Public Sector Equality Duty

Question 40	Response 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?	To be discussed
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 to the right to make any further comment on this question	