

# REPORT TO COUNCIL

**REPORT OF: Councillor Paul Carpenter - Governance and Governance Portfolio Holder**

**REPORT NO: LDS072**

**DATE: 12 July 2012**

<b>TITLE:</b>	Localism Act - Members' Code Of Conduct And Interests	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Statutory requirement	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Paul Carpenter –Governance and Communication	
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<b>INITIAL IMPACT ANALYSIS:</b>  Equality and Diversity	Carried out and Referred to in paragraph (7) below	Full impact assessment Required:
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	Members' Code of Conduct 2007 Localism Act 2011 The Relevant Authorities(Disclosable Pecuniary Interests) Regulations 2012 Report to Standards Committee – LDS068 - 18 <sup>th</sup> May 2012 – Members' Code of Conduct Report to Engagement PDG – LDS069 – 24 <sup>th</sup> May 2012 – Members' Code of Conduct	

## 1. RECOMMENDATIONS

It is recommended that Council consider the recommendations of the Standards Committee relating to the Draft Members' Code of Conduct, the provision for Members' interests and the arrangements for dealing with complaints and that Council approve as follows :

- 1.1 The adoption of a draft Members' Code of Conduct attached to this report at **Appendix A**.
- 1.2 the adoption of arrangements to deal with complaints made about District Councillors set out in **Appendix B** and consider arrangements for dealing with complaints about parish and town councils.
- 1.3 That the monitoring officer be appointed as the Proper Officer to receive complaints of failure to comply with the Members' Code of Conduct by district, town and parish councillors with authority to delegate the function of dealing with the complaints relating to parish and town councils to the relevant parish or town council where appropriate ;
- 1.4 Approve the appointment of an "Independent Person" and a "Reserve". In the event that no appointment can be made, Council delegate to the Monitoring Officer in consultation with the Portfolio Holder for Governance and Communication the authority to make such appointments following a selection process.
- 1.5 That the monitoring officer be given delegated authority, after consultation with the Independent Person or reserve, to determine whether a complaint merits formal investigation and to arrange such investigation;
- 1.6 That the Council disband the Standards Committee and delegate to the Review Board (see Constitution page 82) the authority to receive reports on investigations carried out into alleged failure to comply with the Members' Code of Conduct, to consider whether a complaint should be investigated as required by the monitoring officer, determine the outcome of investigations and report findings to Council as and when required by the Review Board;
- 1.7 That the monitoring officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that the monitoring officer be given discretion to refer decisions on investigation to the Review Board where it is inappropriate for the monitoring officer to take the decision;
- 1.8 Where an investigation finds no evidence of failure to comply with the Members' Code of Conduct, the monitoring officer is instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant, to the member concerned, and to the Independent Person.
- 1.9 Where the investigation finds evidence of a failure to comply with the Code of Conduct, the monitoring officer in consultation with the Independent Person is authorised to seek local resolution in appropriate cases with a summary report for information to Council. Where such local resolution is not appropriate or not possible, the monitoring officer is to report the investigation findings to the Review Board for local hearing and determination;

- 1.10 That Council delegate to the Review Board such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
- Reporting its findings to Council [or to the Town or Parish Council] for information;
  - Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Instructing the monitoring officer to [or recommend that the Town or Parish Council] arrange training for the member;
  - Recommending to Council that the member be removed [or recommend to the Town or Parish Council that the member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Town or Parish Council];
  - Withdrawing [or recommend to the Town or Parish Council that it withdraws] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
  - Excluding [or recommend that the Town or Parish Council exclude] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 1.11 That the Council adopt a Council Procedure Rule requiring Members to leave the room of any meeting which they attend where they have registered a disclosable pecuniary interest and/or have disclosed an interest in accordance with the Members' Code of Conduct in any item of business at that meeting. The proposed procedure rule will equate to the current code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has an interest, except where they are permitted to remain as a result of the grant of a dispensation.
- 1.12 That the monitoring officer be granted delegated authority to consider and determine applications for dispensations in accordance with the legislation relating to dispensations to allow members to participate and vote in any decision where they have any interest. In the event that the monitoring officer is unable to determine such an application for dispensation, the monitoring officer is authorised to refer that application to the Review Board for consideration and determination.

- 1.13 Subject to approval of all the above, Council approve all appropriate amendments to the Constitution to enable the approved provisions to be documented in the Constitution.

## **2. PURPOSE OF THE REPORT**

The purpose of the report is to inform Members about the work which has been done by the Standards Committee and Engagement PDG to make provision for a draft Members' Code of Conduct, arrangements for dealing with complaints and any failure to comply with the code in accordance with the Localism Act 2011. Members are asked to consider the contents of the report and approve the recommendations detailed above.

## **3. DETAILS OF REPORT**

### Background

Members are required by the Localism Act to promote and maintain high standards of conduct. To do so we are required to adopt a new members' code of conduct and introduce arrangements for dealing with complaints.

### 3.1 The Code

The Council must determine its own members' code of conduct. Discussions have taken place with all Lincolnshire Councils to determine a joint approach on code adoption. Draft codes were considered from the Local Government Association, the Department of Communities and Local Government and Lincolnshire County Council. The drafts were all similar. Both the Standards Committee and the Engagement PDG agreed the use of the Lincolnshire County Council draft code with amendment to make specific reference to "respect".

None of the draft codes could deal with the issue of "interests". Regulations have only recently been introduced to define disclosable pecuniary interests. The proposed draft code has been further amended to make provision for **other** interests as well as disclosable pecuniary interests. There is no statutory requirement for members to leave a meeting if they disclose an interest. There is a requirement that they do not take part in the discussion or vote if they have a disclosable pecuniary interest. Members may consider it appropriate to introduce a procedure rule requiring members to leave the room when they disclose an interest.

The Lincolnshire Association of Local Authorities has confirmed that its national association intends to develop a separate code for parish and town councils. Parish and town councils would still have the option of adopting the district code if they so wished. The District Council has a duty to assist parish and town councils. Parish and town councils do not have any obligation to put in place arrangements for dealing with complaints. It may be possible to delegate that function to the parish and town councils to make their own arrangements.

### 3.2 The Independent Person

We must appoint an independent person in accordance with the Localism Act. Transitional provisions allow the current independent members to act as that independent person. A reserve is proposed to cover for the person appointed if that person is unavailable. The appointed independent person cannot attend the committee as a member of the council but could be invited to assist. An advert for the proposed appointment of an independent person and a reserve has been placed on the District Council website. Information relating to response and potential for appointment will be provided at the meeting.

### 3.3 Arrangements for dealing with Complaints.

Arrangements for dealing with complaints about breach of a code must be put in place. Options considered were:

- Retain existing arrangements with a Standards Committee, assessment and review sub- committee.
- Retain a Standards Committee which will need to be politically balanced (unless the Council vote unanimously against the requirement for political balance) with a simplified process. There is no requirement for any committee to have parish representatives. This arrangement could involve delegation to officers to receive and deal with complaints in the first instance with reference to the independent person. Refer to committee those that cannot be resolved in the first instance for determination as to whether or not to investigate and report.
- Delegate the arrangements for dealing with complaints to another committee/board already established.
- Delegate the whole arrangement to officers with no referral to committee.

Emphasis should be on local resolution rather than formal investigation and identifying and resolving underlying issues. The arrangements attached at Appendix B for approval propose the use of the existing Review Board. The terms of reference of the review Board will need to be changed in the Constitution to reflect the recommendations if approved.

### 3.4 Sanctions for failure to comply with the Members' Code of Conduct

There are no statutory sanctions for breach of the code. Effectively, the only common law sanctions available will be censure, report to group leader, withdraw facilities, bar from offices and put on single point of contact and/or report to council. Proposed sanctions will have to be agreed. It may not be practical for sanctions to be imposed by full council. Delegation of the imposition of sanctions is proposed to the Review Board. The Localism Act repeals the requirements for separate Assessment, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. As the statutory provisions no longer give the Standards Committee or monitoring officer powers to deal with complaints, it is necessary for Council to delegate appropriate powers to a committee/board and to the monitoring officer.

- Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It may be appropriate to delegate to the monitoring officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the a committee/panel where it would be inappropriate for the monitoring officer to take a decision on it. An example would be where the monitoring officer has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the monitoring officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.

- “No Breach of Code” finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to the Standards Committee and the Committee take the decision to take no further action. In practice, it may be reasonable to delegate this decision to the monitoring officer, but with the power to refer a matter to a committee if appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable them to get an overview of current issues and pressures, and that the monitoring officer provides a summary report of each such investigation to a committee or panel for information.

- “Breach of Code” finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the monitoring officer to agree a local resolution after consultation with the Independent Person.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for a committee/panel to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the committee/panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

- Action in response to a hearing finding of failure to comply with Code

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority

can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include those sanctions listed at recommendation 1.10 above

There is a particular difficulty in respect of town and parish Councils, as the Localism Act gives the District Council no power to do any more in respect of a member of a town or parish Council than make a recommendation to the town or parish Council on action to be taken in respect of the member. Town and parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the committee/board hearing an investigation and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Parish Council.

### 3.5 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

## 4. **OTHER OPTIONS CONSIDERED**

The wide statutory provisions in the Localism Act permit all the options detailed in the report

## 5. **RESOURCE IMPLICATIONS**

The cost of implementation must be a relevant consideration to ensure any new regime can be provided within budget. It is proposed that the recommendations made can be delivered within existing budgets.

## 6. **RISK AND MITIGATION**

Risk has been considered as part of this report and any specific high risks are included in the table below:

<b>Category Risk</b>	<b>Action / Controls</b>
Failure to comply with the Localism Act or make adequate provision to ensure the Council promotes and maintains high standards of conduct – reputational risk	All the recommendations are made to ensure compliance with the Localism Act. The Members code of Conduct has been drafted to cover appropriate standards

## **7. ISSUES ARISING FROM IMPACT ANALYSIS**

An initial equality impact analysis has shown that there it would be unlikely that there would be an inequality of impact on any of the protected characteristics.

## **8. CRIME AND DISORDER IMPLICATIONS**

Members should be aware that a failure to register disclosable pecuniary interests and any failure to comply with the provisions of the Localism Act relating to disclosable pecuniary interests could result in a criminal offence liable on summary conviction to a fine not exceeding £5,000 an/or disqualification from office for a period of up to 5 years.

## **9. COMMENTS OF FINANCIAL SERVICES**

The introduction of a simplified code and arrangements for dealing with complaints should contain the cost of administering the code and the complaints received.

## **10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

The Council has no other alternative but to adopt a new code. The existing code does not cover the introduction of disclosable pecuniary interests. The Localism Act 2011 requires authorities to adopt a code which is consistent with the seven principles included in the draft code attached at Appendix A. Each code must make provision for pecuniary interests and other interests. No decisions made by this Council can be invalidated just because something which occurred during the making of the decision involved a failure to comply with the code. It is for the council to determine what action may be taken in respect of any failure to comply with the code.

The Adoption of a code under the provisions of the Localism Act must be publicised in such a way which is likely to bring the adoption to the attention of people living in the area.

## **11. COMMENTS OF OTHER RELEVANT SERVICES**

None applicable

## **12. APPENDICES:**

Appendix A – Draft Members’ Code of Conduct  
Appendix B – Arrangements for dealing with Complaints