

# REPORT TO STANDARDS COMMITTEE

**REPORT OF: HEAD OF LEGAL AND DEMOCRATIC SERVICES**

**REPORT NO: LDS 068**

**DATE: 18 May 2012**

<b>TITLE:</b>	<b>MEMBERS' CODE OF CONDUCT AND ARRANGEMENTS FOR DEALING WITH COMPLAINTS</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	STATUTORY REQUIREMENT	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Paul Carpenter – Governance and Communication	
<b>CONTACT OFFICER:</b>	Mrs. Lucy Youles - Head of Legal and Democratic Services (01476 406105; e-mail: l.youles@southkesteven.gov.uk)	
<b>EQUALITY IMPACT ASSESSMENT:</b>  <b>Equality and Diversity</b>	Carried out and Referred to in paragraph (7) below:	Full impact assessment Required: n/a
<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	

## 1. RECOMMENDATIONS

It is recommended that Standards Committee consider the proposals and options contained in this report to refer to the Engagement PDG for consideration to determine and refer to Council for decision:

- 1.1 The adoption of a draft Members' Code of Conduct for recommendation to Council.

<p>1.2</p>	<p>That the Council adopt arrangements to deal with complaints made about District Councillors and consider arrangements for dealing with complaints about parish and town councils</p>
<p>1.3</p>	<p>That, when the Disclosable Pecuniary Interests (DPI) Regulations are published, the monitoring officer, after consultation with the Chair of Standards Committee add to that draft Code provisions which are considered to be appropriate for the registration and disclosure of interests as determined by the Regulations.</p>
<p>1.3</p>	<p>That the monitoring officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;</p>
<p>1.4.</p>	<p>That the monitoring officer be given delegated authority, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation.</p>
<p>1.5</p>	<p>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 relevant committee or panel of members where it is inappropriate for the monitoring officer to take the decision;</p>
<p>1.5.</p>	<p>Where the investigation finds no evidence of failure to comply with the 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 and to the member concerned, and to the Independent Person.</p>
<p>1.6.</p>	<p>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 a committee/panel of the members for local hearing;</p>
<p>1.7.</p>	<p>That Council delegate to the committee/panel 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 –</p> <ul style="list-style-type: none"> <li>▪ Reporting its findings to Council <i>[or to the Parish Council]</i> for information;</li> <li>▪ Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;</li> <li>▪ Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Instructing the monitoring officer to <i>[or recommend that the Parish Council]</i> arrange training for the member;</li> <li>▪ Removing <i>[or recommend to the Parish Council that the member be removed]</i> from all outside appointments to which he/she has been appointed or nominated by the authority <i>[or by the Parish Council]</i>;</li> <li>▪ Withdrawing <i>[or recommend to the Parish Council that it withdraws]</i> facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or</li> <li>▪ Excluding <i>[or recommend that the Parish Council exclude]</i> 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.</li> </ul>
1.8	The monitoring officer is instructed to recommend to Council a Standing Order which equates 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 a DPI, except where he is permitted to remain as a result of the grant of a dispensation.
1.9	The Committee delegates to the Monitoring Officer authority, in consultation with the Chairman of the Standards Committee, to make recommendations to Council in accordance with this report, the provisions of Localism Act, any regulations made in accordance with the Localism Act and recommendations from the Engagement Policy Development Group

## 2. PURPOSE OF THE REPORT

The purpose of the report is to update Members on the provision of a new code and arrangements for dealing with complaints and any breach of the code. Members are asked to consider the attached draft codes and proposed arrangements and confirm the preferred options to progress the introduction of a new code and arrangements for dealing with the code.

## 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 code of conduct and introduce arrangements for dealing with complaints. Following the report in February, further consideration is required in respect of:

### 3.1 The Code

- Discussions have taken place with all Lincolnshire Councils to determine a joint approach on code adoption. Use of a similar code throughout the Lincolnshire authorities would simplify use of the code.
- Draft codes have been received from the LGA, DCLG and LCC. The drafts are all similar and are attached for your attention. Another option could be for the Council to adopt a code similar to the current code
  1. Draft 1 is the LGA code
  2. Draft 2 is the DCLG illustrative code
  3. Draft 3 is the LCC code
- None of the draft codes can adequately deal with the issue of "interests". Regulations have not yet been introduced and there is uncertainty around the definition of disclosable pecuniary interests and other interests. There is no requirement for members to leave a meeting if they declare a pecuniary interest. There is a requirement that they do not take part in the discussion. Members may consider it appropriate to introduce a standing order requiring members to leave the room when they declare a disclosable pecuniary interest.
- Lincolnshire County Council intends to adopt the LCC code. Lincoln City has confirmed it intends to adopt a code similar to the existing code and South Holland has confirmed its preference for the LGA code. There is unlikely to be much consistency throughout Lincolnshire.
- The Lincolnshire Association of Local Authorities has confirmed that its National association intends to develop a separate code for parish councils. They do not consider the LGA or other drafts to be fit for purpose for parish councils. Parish councils would still have the option of adopting the district code if they so wished. The District Council must determine whether or not it is putting in place arrangements to deal with Parish Council complaints. It may be possible to delegate that function to the parish councils to put in place their own arrangements. Again, there is no regulation and it is not known if regulation is intended. Most councils we have spoken to are intending to put arrangements in place to deal with parish council complaints. Parish Councils are not obliged by law to make arrangements for dealing with complaints received.

### 3.2 The Independent Person

- We must appoint an independent person who cannot be the current independent appointed members. It is anticipated that there will be transitional provisions which may allow use of current independent members. The appointed independent person cannot attend the committee as a member of the council but could be invited to assist. This is not yet certain. Consideration must be given to commencing the process for appointment of the independent person to enable an appointment to be made at the Council meeting on the 12<sup>th</sup> July.

### 3.3 Arrangements for dealing with Complaints.

- Arrangements for dealing with complaints about breach of a code must be put in place. It is understood the existing arrangements will no longer be required from the 1<sup>st</sup> July 2012. This is not a statutory deadline. Our existing provision will now be in place until our council meeting on the 12<sup>th</sup> July 2012, when it is proposed a new code is adopted and arrangements for dealing with complaints agreed. There are various options available:
  - 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 simplified process. A member of the Cabinet could be a member of this committee. 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 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.

- 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 office and put on single point of contact and/or report to council. Proposed sanctions will have to be agreed. It cannot be recommended that officers are responsible for imposing sanctions. It may not be practical for sanctions to be imposed by full council. The creation of a committee or use of a panel of members may be the only option. The 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. Indeed, as the statutory provisions no longer give the Standards Committee or monitoring officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to a committee/panel 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 would 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 provide 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 1.7 above

There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the committee/panel 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.

#### **3.4 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 provision in the Localism Act permits all the options detailed above for consideration.

### **5. RESOURCE IMPLICATIONS**

The resource implications of any new regime are unknown. The cost of implementation must be a relevant consideration to ensure any new regime can be provided within budget.

### **6. RISK AND MITIGATION (INCLUDING HEALTH AND SAFETY AND DATA QUALITY)**

The provisions detailed above are proposed to mitigate the risk of challenge in respect of adequate provision as required by the Localism Act 2011 to ensure the Council promotes and maintains high standards of conduct.

### **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

Not applicable

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

There are no crime and order implications arising from this report.

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

Any comments will be supplied to for the meeting.

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

Both the monitoring officer and the deputy monitoring officer have worked closely with the Chairman and Vice Chairman of the Standards Committee to ensure complaints received have been processed in accordance with regulatory requirements. The Standards Committee have worked hard to ensure that all complaints are dealt with fairly and effectively. The Committee is best placed to develop options and make recommendations for future ways of working.

## **11. COMMENTS OF OTHER RELEVANT SERVICE MANAGER**

None applicable

## **12. APPENDICES:**

Draft LGA Code

Draft DCLG Illustrative Code

Draft LCC Code