

Committee: STANDARDS

Agenda Item

Date: 18 July 2011

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**Title: REFERENCE FROM THE CONSTITUTION
WORKING GROUP**

Author: Michael Perry, Assistant Chief Executive – Legal, 01799 510416 Item for decision

Summary

1. This report is to inform members of the deliberations of the Constitution Working Group and to seek members' views with regard to the content of a voluntary Code of Conduct and the procedure for the consideration of an investigation of complaints.

Recommendations

2. That members consider what a voluntary Code of Conduct should contain and how allegations of a breach of that Code should be dealt with.

Financial Implications

3. None arising from this report. Any cost for investigations would be met from existing budgets.

Background Papers

4. The following papers were referred to by the author in the preparation of this report.
 - The report to the Constitution Working Group on 7 June 2011
 - Minutes of the Constitution Working Group 7 June 2011

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	There is no mechanism for an appeal to an independent tribunal against decisions of the Standards Committee. The only

	recourse that a disaffected complainant or subject member would have is therefore by way of judicial review.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. On 7 June 2011 the Constitution Working Group met to consider a report from me (copy attached) on the implications of the Localism Bill. At present the Bill has received its second reading in the House of Lords. The Government timetable is for it to receive royal assent this autumn with a view to it coming into effect in or about April 2012. The timetable is subject to slippage although it appears that the Government will do all in its power to ensure the effective date does not change. It is not therefore appropriate to wait until the Localism Bill has obtained royal assent before deciding how the Council should respond to the new duty to maintain high standards of conduct by its members.
7. The Constitution Working Group concluded that it would recommend to Full Council that it should adopt a voluntary Code of Conduct. It also agreed that the Standards Committee should be asked to advise on the content of a voluntary Code of Conduct. The working group concluded that the Standards Committee was best placed to advise on how allegations of a breach of the Code should be investigated. The working group felt the Council should continue to have a Standards Committee and independent persons should be members of that committee although in the absence of any statutory functions relating to town or parish councils, town and parish representatives would no longer be required.
8. With regard to the adoption of a voluntary Code of Conduct I would suggest that the starting point for members should be the existing statutory Code. Under the Localism Bill provisions regarding the registration and declarations of interests will be dealt with not under a Code of Conduct but under regulations to be laid by the Secretary of State as a criminal offence. It follows therefore that parts 2 and 3 of the current Code of Conduct should be omitted in their entirety. This leaves the General Provisions of the Code for consideration.
9. Referring to the Uttlesford Code of Conduct paragraph 1.2 will be redundant as the general principles are to be abolished under the new Act. The definition of a meeting in clause 1.4.1 would also appear to be inapplicable as this is only used in the context of interests which will be dealt with outside of the Code. Paragraph 1.5 will also cease to have relevance as it relates to town and parish councils which will no longer be the Council's responsibility.
10. Paragraph 2.1 of the existing Code would warrant retention. For reasons discussed later I do not believe that paragraphs 2.2 – 2.4 do retain any

relevance. I would invite members to consider whether paragraph 2.5 warrants retention.

11. With regard to paragraph 3 of the existing Code, much of the content of this would appear to be unobjectionable but members' views are sought. With regard to paragraph 3.5 however, I would caution against including such a provision. The majority of cases before the Adjudication Panel/First Tier Tribunal where there has been a finding of bringing the Council or office of councillor into disrepute have linked such a finding with another breach of the Code of Conduct. The concept of bringing the Council or office of councillor into disrepute (outside of the criminal law) by action or inaction which does not involve a breach of another provision of the Code is a difficult one. Councillors who commit certain offences are subject to automatic disqualification in any event. I believe that if there were to be a finding of a breach of the Code of Conduct by bringing the Council or office of councillor into disrepute which is not linked with another breach of the Code of Conduct such a finding would be highly susceptible to challenge by way of judicial review. If members are satisfied the remaining provisions of paragraph 3 are adequate, then this provision could be safely discarded.
12. The Working Group also asked that the Committee give consideration to how allegations of a breach of the Code of Conduct should be considered.
13. It is recommended that as at present only written allegations of a breach of the Code should be considered. However, I believe there is general acceptance that the current procedure for dealing with complaints is over bureaucratic and disproportionate.
14. It may help to remind members of the current procedure. When an allegation of a breach of the Code of Conduct is received it must be considered by a sub-committee of the Standards Committee. That committee will decide whether or not, on the facts as alleged, there could be a breach of the Code of Conduct and if there could whether the matter is sufficiently serious to warrant an investigation.
15. If the sub-committee decides the matter does not warrant an investigation, then the complainant has a right to a review from a differently constituted sub-committee. In that process it is open to the applicant to submit additional information to support his or her complaint.
16. When a complaint is passed for investigation (whether by the original assessment sub-committee or upon review) the matter is generally passed to the Monitoring Officer to arrange for a local investigation. Investigations are very resource intensive. At the conclusion of the investigation, the investigator must prepare a report in which he or she sets out his or her findings of fact and is obliged to state whether or not in his or her opinion those findings of fact amount to a breach of the Code of Conduct. Those findings and opinions are not binding upon the Standards Committee.
17. A sub-committee of the Standards Committee then has to meet to consider the report but without holding a hearing at that stage. If the finding of the

investigator is that there has been no breach of the Code of Conduct the sub-committee must determine whether to accept that finding or reject it and require a hearing in any event. Such a hearing could be before the Standards Committee or could merit a reference to the First Tier Tribunal. If the investigating officer finds that there has been a breach of the Code of Conduct then the function of the sub-committee is to determine whether the powers of sanction of a Standards Committee would be sufficient. If the view of the sub-committee is that the powers of sanction are not sufficient it may refer the matter for consideration to the First Tier Tribunal. In other cases the matter is referred to a hearing before the Standards Committee.

18. It would be seen that the current procedure (which is prescribed by the regulations) requires at least 3 and on occasions 4 hearings before a matter is finally disposed of. This causes delay and also imposes a strain on resources in terms of officer and member time.
19. One possible way of reducing the administration of complaints would be for there to be a streamlined vetting procedure. This could involve a consideration of the complaint by the Monitoring Officer in consultation with the chairman of the Standards Committee or another independent person who is a member of that committee with the complaint being rejected at that stage if there is no possibility of a finding of a breach of the Code of Conduct or where the allegation appears to be vexatious, frivolous or trivial. I would suggest that there should be no right for the complainant to seek a review of that decision.
20. Where a matter is passed for investigation, I would ask members to consider whether the current statutory procedure which requires the investigator to make findings of fact is appropriate or whether it would be preferable for the investigator to merely set out in the report the facts that have been agreed and the facts which have not. If such an approach were to be adopted, it follows that the investigator would not be in a position to indicate whether or not in his or her view there had been a breach of the Code of Conduct as there would be no factual basis upon which to reach such a conclusion.
21. I also recommend that there should not be a hearing to consider the investigator's report. I would suggest that every case should proceed to a full hearing with the sub-committee reaching its own conclusions on facts and whether or not those facts constitute a breach of the Code of Conduct.
22. This leads onto the question of sanction. The Localism Bill does not contain any powers of sanction. In the event of a finding of a breach of the Code a member may be censured, required to apologise or required to undergo training or mediation. Greater sanctions such as removal from committees or outside bodies or the Cabinet require the concurrence of the subject member's group or the Leader. Although the Standards Committee may have independent members (and it is a recommendation of the Constitution Working Group that this should be the case) legislation does not permit non-elected members to vote unless the function of the committee is advisory only. The Committee therefore needs to consider whether it would prefer the right to impose the more limited sanctions itself (in which case independent members

may not be voting members of the committee) or whether it would prefer to act as a whole committee making a recommendation of sanction to Full Council.

23. The Constitution Working Group also asked the Committee to consider the issue of notification of members that a complaint has been made. At present the regulations only permit the Standards Committee to authorise disclosure of the details of a complaint to a subject member. The Monitoring Officer may notify a subject member that a complaint has been made but may not give any further information other than the identity of the complainant. When complaints were made to the Standards Board it was the practice of the Board not to inform the subject member that a complaint had been made until a decision had been taken as to whether or not the complaint should be referred for investigation. This stance provoked a great deal of criticism from subject members (whether or not the complaint was passed for investigation). As a matter of policy therefore this Committee agreed that subject members should be informed that a complaint had been made as soon as reasonably practicable after it was received but no details given until the matter had been considered by the Standards Committee. Members are asked to consider whether this restriction would still be appropriate after the statutory restrictions on disclosure of complaints has been abolished.

Risk Analysis

24. The risks are as set out in my report to the Constitution Working Group dated 7 June 2011.