

**Committee: Standards**

**Agenda Item**

**Date: 3 March 2014**

**7**

**Title: PARISH COUNCIL UPDATE**

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Item for information

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### Summary

1. Members will recall that on a previous occasion I highlighted the lack of knowledge concerning which parish councils had adopted the Uttlesford Code of Conduct. This report is to update members as to the current position and also to advise Members of the extent to which parish councils have embraced the power of general competence.

### Recommendations

2. Members note the contents of this report.

### Financial Implications

3. None.

### Background Papers

4. None.

### Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Town and parish councils which have not adopted a code of conduct to be effective from 1 July 2012 are in breach of the legislation. Whilst there is no sanction contained in the legislation decisions of such councils must be at risk of challenge by way of judicial review, particularly where members' interests are involved. Further councillors with disclosable pecuniary interests put themselves at risk of

	prosecution if they fail to deal with such interests in accordance with the legislation.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

6. The Local Government Act 2000 imposed an obligation upon all local authorities to adopt a Code of Conduct in a form prescribed by Parliament. If a council failed to adopt the code of conduct the prescribed code automatically applied to the council by statute and members who refused to sign an undertaking to abide by the code ceased to be members of the authority.
7. The code which was prescribed by central government was last updated in 2007 and again adoption of that code was obligatory.
8. The Localism Act 2011 abolished the power of the government to prescribe a code of conduct. The Act contained a requirement on the part of the local authorities to promote high standards of conduct and in order to do so councils were obliged to adopt a code. The code had to be compliant with what are commonly known as the Nolan principles which are expressly set out in the Act. The code is also required to make provision for the registration and declarations of interest. Apart from these requirements the contents of a code were left entirely to council's discretion.
9. Town and parish councils were expressly empowered to adopt the code of conduct of the district within which they were situated. If they chose to do so they were absolved of the duty of ensuring compliance with the Nolan principles.
10. Having adopted a code of conduct the Standards Committee advised all town and parish councils within the district to adopt the Uttlesford code. The advantages to the town and parishes were expressed to be as follows:
  - (a) They need not demonstrate compliance with the legislation as they could assume the district council had done that on its behalf (as indeed this council had)
  - (b) Certainty, as our code of conduct was precise as to what was required of members
  - (c) Familiarity, as the code was based largely upon the previous code which councillors were used to working with
  - (d) Consistency, as most authorities in Essex were adopting the code the same as or very similar to that being adopted by Uttlesford

- (e) Availability of advice, as whilst the Uttlesford legal team would be fully familiar with our code of conduct they would not have such familiarity with any alternative code which may be adopted by a town or parish council and would not therefore be in a position to give ad hoc advice with regards to issues which may arise under the code
11. In addition the facility was offered to town and parish councils to delegate to Uttlesford District Council the power to grant dispensations to permit members with pecuniary interests to take part in debates and vote on issues where such interests arose and also the power to impose sanctions where a breach of the code was found.
  12. Parish Councils are asked to indicate whether they had adopted the code of conduct and whether they had delegated either or both of the powers referred to above.
  13. Many town and parish councils did not respond in the first instance. However, reminders did produce further responses and an examination of the websites of the town and parishes concerned has produced further information.
  14. I can report that 48 of the 53 parishes within the district have adopted the UDC Code of Conduct. I believe that another has adopted that code as the register of interests completed by the members of that authority is on the current form, but the parish clerk has not responded to the enquiry and the minutes of council meetings are not on-line as the council does not have a website.
  15. Three councils have not responded and there is no information on-line to indicate whether or not they have adopted the Uttlesford code.
  16. One parish council has certainly not adopted the Uttlesford code. Its code of conduct which is available on its website is the old 2007 code and the council members have not completed registers of interest. I have written to that council accordingly.
  17. One parish council has considered the code of conduct and has expressly refused to adopt it because of the requirement for members' interests to be published on-line. The parish clerk has asked if I would be prepared to go and speak to the councillors of that council and I have accepted an invitation to do so on the 4<sup>th</sup> March.
  18. Of the councils that have adopted our code of conducted 12 have delegated both the power to grant dispensations and sanctions to Uttlesford District Council. Two councils have delegated only the power to grant dispensations and one council has granted only the power to impose sanctions.
  19. In addition to the changes to the standards regime, the Localism Act introduced a power of general competence. In summary this is a power for a council to do anything which a natural person could lawfully do. The

power is automatically available to all principle councils (district councils and above). However it is only available to town and parish councils which meet certain qualifying criteria, namely that at least two thirds of the councillors must have been declared to have been elected and that the clerk must hold a prescribed qualification.

20. Councils are creatures of statute. Prior to the Localism Act 2011 this meant that they could only act in accordance with a specific statutory power. The general power of competence is therefore a very valuable one and indeed the government encourages its use as a power of first rather than last resort.
21. I have enquired of the town and parishes as to whether they have the general power of competence. I asked the clerks to indicate if the council had the general power of competence and if not if the council met the electoral and/or clerk qualification requirements.
22. Of the 53 towns and parish councils in the district 27 responded. Of these only 5 had the general power of competence. Unfortunately the responses did not all identify whether the criteria were met but at least 2 parish councils have qualified clerks but do not meet the electoral criteria and at least 10 meet the electoral criteria but do not have qualified clerks. That leaves 10 councils out of the 27 that responded that appear to meet neither of the criteria.

### **Risk Analysis**

23. There are no risks to the council arising from this report.