



# Uttlesford District Council

Chief Executive: John Mitchell

## Standards

**Date:** Monday, 13 October 2014  
**Time:** 16:00  
**Venue:** Committee Room  
**Address:** Council Offices, London Road, Saffron Walden, CB11 4ER

**Members:** Councillors C Cant, K Eden, E Godwin, M Lemon (Chairman), J Loughlin and J Menell.

**Other Attendees:** Mrs G Butcher-Doulton and Mr V Lelliott (Independent Persons)

### Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given two working days prior notice.

## AGENDA PART 1

### Open to Public and Press

- 1 Apologies for absence and declarations of interest.
- 2 Minutes of the previous meetings.
  - 2i Minutes of the meeting held on 16 June 2014 4 - 6
  - 2ii Minutes of the meeting held on 5 August 2014 7 - 14
- 3 Matters arising.

<b>4</b>	Correspondence received from Debden PC	15 - 20
<b>5</b>	Monitoring Officers' Conference on Standards	21 - 24
<b>6</b>	Review of procedure for dealing with complaints to the Standard Committee	25 - 34
<b>7</b>	Independent Members	35 - 39
<b>8</b>	Any other items which the Chairman considers to be urgent.	

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**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD  
SAFFRON WALDEN at 4.00pm on 16 JUNE 2014**

Present: Councillor R M Lemon – Chairman.  
Councillors C Cant, K Eden, E Godwin, J Loughlin and J  
Menell (Uttlesford members)  
Mrs G Butcher-Doulton, Mr V Lelliott and Mr A Brobyn  
(Independent members).

Officers in attendance: M Cox (Democratic Services Officer) and M Perry  
(Assistant Chief Executive - Legal).

**S1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**S2 MINUTES**

The minutes of the meetings held on 3 March 2014 were agreed and signed  
by the Chairman as a correct record.

**S3 BUSINESS ARISING**

**i) Minute S17 – Call-in Procedure**

Following the last meeting, this item had been referred back to Full Council  
on 8 April 2014. The new protocol for the call-in of planning applications had  
been adopted as originally recommended by the committee.

**ii) Minute S18 – Probity in Planning**

The Council meeting on 8 April 2014 had considered the committee's  
recommendation for a protocol for dealing with employee and councillor  
applications. It had agreed to adopt the Protocol with one change; that  
applications from ex-employees or ex-councillors should be dealt with after a  
period of 2 years, rather than the 4 years recommended by the committee.

**S4 ANNUAL REPORT TO FULL COUNCIL**

Members considered the proposed Annual Report to Council, which detailed  
the work carried out by the committee during the past year.

In relation to breach of the code of conduct complaints, Mr Brobyn asked for  
clarification on his role as independent advisor to the subject member, in  
terms of the type of advice he should be providing and what he should or  
shouldn't say. The other independent members agreed that it was unclear

whether the role was to discuss the core matters of the case or to offer support in understanding the procedure.

The Assistant Chief Executive – Legal explained that this was a new function introduced by the Localism Act 2011. The independent person's role was to give their views to the subject member and the Standards Committee, but there was nothing explicit about what this should entail.

The legislation only obliged councils to appoint one independent person but Uttlesford had appointed three members who worked in rotation. This addressed any issue of a conflict of interest as one person could provide the initial advice and a different person could attend any resultant hearing.

Mrs Butcher –Doulton said that in her experience every case was different, but she felt that the independent person did provide a useful role. It would however be useful to discuss this issue with the Monitoring Officer in order to achieve a broadly consistent approach.

It was AGREED that the independent members should meet with the Assistant Chief Executive – Legal to discuss their role in advising the subject member.

The Assistant Chief Executive – Legal informed the committee that the legislation did not permit the re appointment of the current independent members at the end of the Council term. He said this was disappointing, as he had valued their input over the last 4 years. It was now necessary to look to appoint new members, which would require a review of the job description and recruitment process.

The Chairman suggested that this should be added as a future action for the committee. Also, with the district and parish council elections in 2015, the committee should consider its role in the training of new members.

Councillor Cant raised the issue of member/member and member/officer relations at meetings. She felt that on recent occasions, the tone of some comments had been inappropriate, particularly when questioning an officer's professional opinion. She was informed that in terms of members' conduct this came under the umbrella of treating people with respect. However, it was legitimate for there to be a robust challenge at meetings as long as the remarks were not insulting or belittling. The Chairman suggested that this was an area that could be incorporated into the training for new members.

Councillor Loughlin asked if any action could be taken in relation to vexatious complaints, particularly those from serial complainers. The Assistant Chief Executive – Legal replied that the public had the right to make a complaint but the council had in place a robust procedure to assess whether there had been a breach of the Code of Conduct.

RESOLVED that the draft Annual report with the additional future actions set out above, be approved for submitting to Full Council on 15 July 2014.

S5 **MONITORING OFFICER UPDATE**

The Assistant Chief Executive – Legal presented a report which set out standards activity since the last meeting. Members noted the increase in breach of the code of conduct complaints. There had been 20 complaints since the current standards regime had come into force in July 2012, compared to 27 complaints for the whole period from July 2008 to 30 June 2012.

This increase was despite the fact that the power of sanction was much more limited under the new regime. It appeared the complainant's main objective was to have it acknowledged that there had been a breach of the Code, and for the subject member it was very important to have their name cleared. Members commented that recently, there appeared to have been a number of tit for tat complaints, and this was an issue that might have to be looked at in the future.

The committee was advised that there were now only two parish councils who did not appear to have adopted a code of conduct. The chairman suggested that the Assistant Chief Executive – Legal should inform the ward members responsible for those parishes but otherwise it was agreed that it would be disproportionate to chase them any further. The Chairman thanked the Assistant Chief Executive - Legal for the considerable amount of work he had put into this exercise.

S6 **DATE OF NEXT MEETING**

The next meeting would be held at 4.00pm on Monday 13 October 2014.

The meeting ended at 4.45pm

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON  
ROAD SAFFRON WALDEN at 10.00 am on 5 AUGUST 2014**

Present:- Councillors R Lemon – Chairman  
Councillors K Eden and J Loughlin  
Mrs G Butcher-Doulton (Independent Member)

Officers in attendance:- M Cox (Democratic Services Officer).  
C Olivia (Solicitor) and M Perry (Assistant Chief Executive  
– Legal and Monitoring Officer)

Also present: Andrew Blatt (Solicitor representing Mr Luck)

Members of public present: Richard Simmons, Sue Shepherd, Mike  
Fairchild and Chris Ward

**SC7 APOLOGIES AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**SC8 CHAIRMAN'S ANNOUNCEMENT**

The Chairman opened the meeting and asked all the parties present to introduce themselves.

Councillor Luck confirmed that he had received all the paperwork and understood the procedure to be followed.

**SC9 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT**

The hearing had been called to determine an allegation that Councillor Stewart Luck from Debden Parish Council had breached the Code of Conduct of Debden Parish Council.

The allegations arose from the meeting of Debden Parish Council on the 13 February 2014. This was an extraordinary meeting, which had been called to enable the parish council to fix the precept for the financial year 2014-2015. At the same meeting the parish council was to consider increasing the precept by a sum sufficient to enable the parish council to service a Public Works Board loan to fund the costs of constructing a new village hall. This was a controversial issue, which attracted a great deal of local attention and 62 members of the public attended the meeting. Councillor Luck was Chairman of the new village hall group, which was promoting the project.

Following the meeting a complaint had been made by District Councillor Tina Knight that Councillor Luck had

- Showed disrespect to the Parish Clerk of Debden Parish Council, the Chairman of Debden Parish Council and the Monitoring Officer of Uttlesford District Council.
- Had refused to observe the protocols or codes of practice adopted by the authority
- Had bullied the Parish Clerk.
- Had sworn at members of the public.
- By virtue of his conduct he caused a meeting to be closed before the business of that meeting had been concluded

### **Procedural Issues**

Mr Blatt, Councillor Luck's legal representative raised the following legal points.

He had initially considered the Monitoring Officer's report to be flawed because it did not appear to take account of the witness statements submitted on behalf of Councillor Luck. He had discussed this issue with the Monitoring Officer prior to the meeting and he confirmed that he had taken the witness statements into account although he had given them little weight. Mr Blatt said that on this basis he would not pursue this point.

The second point was the right of Councillor Luck to give and call evidence, which he felt was being denied at this hearing. In order for all evidence to be properly tested and considered by the Committee he asked members to take and accept the written evidence at face value or if they wanted to weigh up the evidence then the witnesses should be heard. He quoted the Committee's procedure rules which stated that the subject member 'will' have the opportunity to attend, address the meeting and call evidence.

Mr Blatt then referred to a story in the local press that had been based on the report for this meeting which was available on the council's website. This inferred that Councillor Luck had already been found guilty of breaching the code and this meeting was just to determine the appropriate sanction. This was an unacceptable slur on the character of Mr Luck. In order for there to be a fair hearing he asked at the very least that the committee give significant weight to the written evidence.

The Monitoring Officer replied that these were not court proceedings and as such the process was more informal and proportionate. However, even courts controlled the evidence they would admit. For example in the county court evidence was in writing in the first instance and oral evidence only arose from cross and re-examination. He had formed a view of the statements but felt there was nothing to be gained

by hearing verbal statements by the witnesses, as if they were called to give evidence they were likely to stick to their stories.

In relation to the press article the Monitoring Officer said that the recommendation (para 2) in his report clearly stated that members were to determine whether or not they accepted his findings. He very much regretted the miss reporting in the press but unfortunately the council had no control over this.

The Monitoring Officer then updated the committee on the complaint that Councillor Luck had sworn at members of the public. At the time of writing his report he had decided on the balance of probability that Councillor Luck had not apologised for this profanity. This was because at the meeting following the EGM there had be no record that Councillor Luck had challenged the accuracy of the minutes and the Monitoring Officer believed that if he had made an apology he would have been keen for this to be recorded.

However further information had since come to light in the form of a statement by Councillors Simmonds and Watson. They confirmed that Councillor Luck had asked for his apology to be recorded at the following meeting but the council did not agree. The Monitoring Officer now accepted that Councillor Luck had made an audible apology at the meeting.

The members of the committee, the legal advisor and the democratic services officer left the room at 10.30am to consider the legal points raised and returned at 10.40am and made the following statement.

The meeting today is a hearing and not a trial and the proceedings should therefore be proportionate. Members are content to follow the committee's agreed procedure. The committee will consider the written evidence as submitted and Councillor Luck will have the opportunity to put his case.

### **Report of the Monitoring Officer**

The Monitoring Officer presented his report and explained the findings of fact and reasons as to whether the facts as found constituted a breach of the Code.

His report concluded that he had found no breach of the code in a number of areas:-

Councillor Luck did not show disrespect to the Chairman of the Parish Council or to the Monitoring Officer. His conduct towards the parish clerk was not considered sufficient to constitute bullying. As no vote was taken at the meeting he had not breached the codes and protocols of the council. Although his behaviour may have contributed to the meeting being closed, the decision to close the meeting was premature

and Councillor Luck was not to blame for the meeting being closed early.

Members confirmed that they AGREED with these findings and accepted that was no breach of the code of conduct in these areas.

The Monitoring Officer explained that he had found the following two breaches of the Code.

- 1 In shouting down the Parish Clerk, Councillor Luck did fail to treat the parish clerk with disrespect.
- 2 Councillor Luck did swear at the members of the public present and in doing so found that he had failed to treat those members of the public with respect.

In reaching this conclusion the Monitoring Officer had taken account of a recent decision of the High Court in R (on the application of Dennehy) v London Borough of Ealing, which concluded that comments directed at residents of part of the borough amounted to treating those residents with disrespect. When applied to this case, he concluded that Cllr Luck's remarks were directed at an identifiable section of the public and that the remarks were offensive not only by his use of bad language but also by his inference that the persons to whom his remarks were directed did little or nothing for the benefit of the village.

He said that if the committee did not wish to accept this conclusion it could alternatively apply section 3.3.7 of the Code that Councillor Luck behaved in a manner that could reasonably be regarded as bringing his office into disrepute.

In considering the breach and the appropriate sanction, Members should take account of the new evidence in which it was now accepted that Councillor Luck had made an audible apology.

### **Questions to the Monitoring Officer**

In relation to the treatment of the parish clerk, Mrs Butcher–Doulton questioned the different tone of words between the claim that the clerk had been 'shouted down' and the parish clerk's statement which said that Councillor Luck had been 'forceful and uptight'. The Monitoring Officer said this reflected different versions of events and it was up to the committee members to make a judgement on this matter.

The Monitoring Officer explained the background to the incident at the meeting concerning Councillor Luck's intention to vote. Members of the parish council who were also members of the new village hall group had been given dispensation to speak at parish council meetings where

this item was discussed. However, as the members had been appointed to that body he had advised that they should not vote at that meeting. Not all members had accepted this advice, including Councillor Luck who declared at the meeting that he still intended to vote. However, this was a pecuniary rather than a disclosable pecuniary interest, which could result in a breach of the code of conduct. The Chairman and the parish clerk had wrongly advised him that the consequences would be to be struck off or to face a substantial fine of up to £5,000. The Monitoring Officer also pointed out that there was no obligation on the member to accept his advice.

Mrs Butcher-Doulton commented that the minutes of the meeting were very light and appeared not to include a number of key issues. This meant there was no independent evidence to support the fact that Councillor Luck had asked for his apology to be recorded. The Monitoring Officer said he accepted the statement by Councillors Richard Simmons and Councillor Stephanie Watson and this supported the fact that an apology had been made.

### **Evidence by Councillor Luck and questions by the Committee**

The Committee asked a number of questions on the evidence submitted by Councillor Luck.

Members asked him to explain the background to the new village hall project and the relationship with the parish council. Councillor Luck said a new village hall had been an ongoing project for 20 years but had consistently failed due to lack of funding, and even grants which had been obtained were often only for a year. In order to progress the project he had asked the advice of Uttlesford's Chief Financial Officer who had suggested the possibility of asking the parish council to take out a loan with the Public Works Board to be funded through the Parish precept. This would require a tri- party arrangement between the new village hall project, the trustees of the village hall and the parish council.

The most recent scheme had been the subject of a village questionnaire and been put to a public meeting. From the 86 attendees there had been support from 43 people, 13 had been against and the rest abstained. The project was at a stage where funding was required to take it forward.

Councillor Luck had asked for this funding request to be put on the parish council agenda, but as there was no support he called an extraordinary meeting. The recommendation was for the parish council to take out a loan of up to £400K with the likely scenario that it would be paid back if grants for the project were obtained in subsequent years. At the meeting 5 of the 7 parish councillors were compromised, which is why he wished to vote on this matter.

In answer to questions from Councillor Eden, it was confirmed that the vote on the additional precept was not taken. The council voted only on the precept to cover the council's budget, the meeting was closed before the second vote could take place.

Mrs Butcher-Doulton commented on the number of people supporting the proposal relative to the population of the village. Councillor Luck said he had been advised that the response to the public meeting was a typical turnout and the number of replies to the questionnaire was above average.

Members asked why Councillor Luck had answered 'no' regarding his swearing to the Monitoring Officer's questions sent on 28 March 2014. He replied that the word quoted were not the exact words used. He clarified that these were 'you at the back of the room have done shit towards the village Hall'. He confirmed that he had only used this one swear word and had not meant to be derogative. He knew most of the people at the meeting and was on good terms with the majority of them.

Councillor Luck was asked to comment on the parish clerk words that he was 'forceful and uptight' when speaking to her. Mr Blatt pointed out this this was a reported extract of telephone conversation with the Monitoring Officer so were not her own words.

Councillor Luck confirmed that he had been forceful but this was in response to the untrue statements about the consequences of him voting. It felt like harassment and intimidation. He said he did not shout at people but would put a forceful debate. There was no evidence that he had 'shouted down' the clerk.

In answer to a question by Councillor Loughlin it was confirmed that Councillor Watson had not attended the extraordinary meeting so did not know whether or not Councillor Luck had apologised. Nevertheless, the Monitoring Officer said that this evidence added weight to the fact that he had challenged the accuracy of the minutes.

Mr Blatt asked Councillor Luck to explain why he had used the swear word. Councillor Luck said he had worked for an American company for the last 40 years when the word 'shit' was an acceptable word when emphasising a point. He realised that it was not appropriate but in the charged situation he had gone back to his roots. He should have instead used the word 'nothing'.

In mitigation he said some of the remarks made to him had been nasty and cutting. The public speaking went on past the 15 minutes period and the meeting became more emotive. He confirmed that he was responding to the hostility of the meeting, particularly as the new village hall group had committed a lot of time and effort to the project which was at a good point only to fail again. However he was prepared to give a written apology if required.

Cllr Loughlin commented that if the meeting was in disarray it should have been adjourned at an earlier stage.

### **Questions from the Monitoring Officer**

The Monitoring Officer asked if the new village hall project had been controversial before the suggestion of it being funded by the tax payer. He noted that the annual parish precept was £16k whilst the additional proposal to take out the loan would add an additional £18k. Councillor Luck confirmed these amounts but said it was likely that the loan would be paid off earlier if other external grants became available. The actual increase in the weekly precept for the village residents would actually be very small. He also confirmed that although the issue of the precept was controversial there was also heated discussion around the design of the hall.

The Monitoring Officer asked about the usual public speaking arrangements for the parish council meetings and what was different at this meeting. Councillor Luck said there was usually a 15 minute public speaking session at the beginning of the meeting but on this occasion the Chairman had allowed the public to take part in the meeting and it had become highly charged. He had made his remark just after a member of the public had spoken.

The Monitoring Officer gave his opinion of the matters before the committee.

1. Treating the parish clerk with disrespect - if the committee accepted his findings on this issue an apology would be appropriate.
2. Treating members of the public with disrespect. This breach had been accepted by Councillor Luck and it was now accepted that an apology had been made. He concluded that it might be sufficient to take no further action.

### **Councillor Luck's closing statement**

Mr Blatt commented on the two areas where the Monitoring Officer had found a breach of the Code

1. Treating the Parish Clerk with disrespect

There was no corroborative evidence that Councillor Luck had shouted down the parish clerk. The key point was that the parish clerk herself had not made a complaint and the witness statement had backed up this point. He considered that on the balance of probability the parish clerk had not been treated with disrespect and no further action should be taken.

2. Treating the Members of the Public with disrespect.

Mr Blatt accepted the Monitoring Officer's conclusion that Councillor Luck's remark had been made to an identifiable group of people. In mitigation he pointed out that Councillor Luck had admitted the use of the word and that the language had been inappropriate. It was now accepted that he had made an audible apology and he submitted that no further sanction was required.

The Committee left the room at 12.15 and returned at 1.00pm to announce the following decision

**Decision**

1. The Committee find that Councillor Luck did not treat the parish clerk with disrespect as there is no evidence to suggest that he was no more than forceful in his language.
2. Councillor Luck admitted he swore at a group of residents at a parish council meeting. The Committee find that he did apologise for this but nevertheless we find that he treated this group with disrespect which is not acceptable behaviour by any person in public office.

The meeting ended at 1.00pm.

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**4**

**Title: CORRESPONDENCE RECEIVED FROM  
DEBDEN PARISH COUNCIL**

**Author: Michael Perry, Assistant Chief Executive  
Legal, 01799 510416**

Item for decision

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### **Summary**

1. This report is to inform members of correspondence received from Debden Parish Council following the conclusion of an investigation into an allegation that a member of that council had breached its Code of Conduct.

### **Recommendations**

2. That members determine how to respond to the correspondence received.

### **Financial Implications**

3. None.

### **Background Papers**

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Letter of 8 September 2014 from the chairman of Debden Parish Council together with an enclosure.
  - Email of 6 August 2014 from the Parish Clerk of Debden Parish Council to me.

### **Impact**

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Under the Localism Act 2011, relevant authorities (as defined) are required to have in place a Code of Conduct for its members. For this purpose “relevant

	<p>authority” includes a parish council. Section 28(6) also requires relevant authorities other than parish councils to have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. The function of investigating allegations and taking decisions on the allegations regarding parish councils are carried out by the district council for the district within which the parish is situated. There is no legislation or guidance regarding the nature of the arrangements to be put into place. These are within the discretion of the authority. There is no mechanism for an appeal against a decision of a standards committee. Such decisions may only be challenged by proceedings for judicial review.</p>
Sustainability	None.
Ward-specific impacts	Wimbish and Debden
Workforce/Workplace	None.

## Situation

6. On 4 March 2014 the council received a complaint alleging that a member of Debden Parish Council had breached that council’s Code of Conduct. The complaint was passed for investigation and following the investigation by me a report was prepared for consideration by members of the Standards Committee. In my report I had found two breaches of the Code of Conduct. The committee met to consider my report on the 5 August 2014 when members upheld my finding of a breach of the Code of Conduct in one respect only.
7. The factual basis of the breach of the Code upheld by members was that it was alleged that at an extraordinary meeting of Debden Parish Council on the 13 February 2014 the subject member swore at a group of members of the public thereby failing to treat them with respect. The councillor concerned admitted the allegation and accepted that this was indeed a breach of the Code of Conduct.
8. During the course of the investigation the subject member submitted statements from various persons who had been present at the meeting. Many of these persons said they heard the subject member apologise for his remark once he had made it. When I interviewed the subject member he maintained that he had apologised at the meeting concerned.

9. At the time of the preparation of my report I did not accept that the subject member had apologised at the meeting. Despite some evidence he had done so, I noted that the apology was not recorded in the minutes of the February meeting and further at the meeting of the parish council in March 2014, when the accuracy of the minutes of the previous meeting was considered there was no record of the subject member seeking to correct the minutes. Had he done so even if the amendment had not been accepted by the majority of the council, the minutes ought to have recorded that fact. The subject member informed me that when he sought an amendment to the minutes he was told that it was not necessary to record everything which is said at a parish council meeting. I expressed the view in my interview with him that this was an issue that was so important that I felt that had he attempted to have the minutes amended this would have been recorded.
10. In my report to the Standards Committee I set out the subject member's submissions with regard to the allegation. One of these was that he maintained he apologised immediately after swearing. My response to that submission there was insufficient evidence for me to conclude an apology was given but that in any event if members were satisfied that an apology was given that went to mitigation and not to the issue as to whether or not there had been a breach of the Code of Conduct.
11. At the hearing before members, the subject member through his solicitor produced two documents from fellow parish councillors. One of these was present at both the February and March meetings, one was present at the March meeting alone. Both councillors confirmed that at the meeting of the parish council in March 2014 the subject member requested that his apology be noted in the minutes of the February meeting. The councillor who was present at both meetings said that the amendment was refused by a majority of the council but that he was not sure why. The councillor who was present only for the March meeting stated that the subject member asked for his apology to be recorded in the minutes but was refused on the grounds that the minutes do not have to record verbatim everything which is said at a meeting.
12. In the light of that written evidence produced on the day of the hearing I was prepared to accept as a matter of fact that on the balance of probabilities the subject member had apologised for using a profanity at the February meeting and that he had sought an amendment of the minutes when they were considered by the parish council in March 2014.
13. At the hearing the subject member, through his solicitor, stated that in the event that members were not satisfied that an apology had been given or were not satisfied that the apology was sufficiently audible the subject member was prepared to give a further apology to the parish council.
14. Having retired to consider its decision, the committee determined that the subject member had breached the Code of Conduct but it accepted that an apology had been given and was sufficiently audible and that no further action was therefore required.

15. The only sanction open to the Standards Committee for a breach of the Code is to censure the member concerned. As an alternative it may make recommendations or request certain action on behalf of the subject member. Although I was not advising the members as I was presenting the case, my view would have been in the context of this case (the one off use of a swear word at what was a particularly heated meeting) if members had considered that the subject member had not apologised, in the light of his offer to the committee to do so a censure would have been disproportionate and a recommendation to issue an appropriate apology would have been the appropriate sanction. The finding of fact made by members made such action unnecessary.
16. Given the evidence that was available to the committee that an apology had been tendered the committee were quite entitled to find as a fact that this had occurred. Had the committee had any concerns on that issue, it would have been possible for the meeting to have been adjourned for further enquiries to be made. However, such a step would have been wholly disproportionate. Having accepted there had been a breach of the Code of Conduct whether or not an apology had been tendered was a matter for mitigation only. To have adjourned the hearing to enquire into mitigation would not have been an appropriate use of resources in the context that had members been persuaded the subject member had not apologised the likely outcome would have been a recommendation for an apology which would not in itself have been enforceable had the subject member then declined to do so.
17. In his letter to the chairman of the Standards Committee the chairman of the parish council raises certain specific questions. The first of these is why the parish council were not advised of or invited to attend the hearing.
18. The parish council did not make the complaint. It was not a party to the proceedings. Hearings are normally held in public as was the case here. The agenda and papers were published in the usual way. The only parties given specific notice of the hearing are the complainant, the subject member and any witnesses (none in this case) who are required to attend. Had any representatives of the parish council attended the hearing they would not have had the right to ask questions or to address members of the committee. There is therefore no purpose in notifying the parish council of or inviting it to attend the hearing.
19. The next question raised by the parish council is why they were not consulted regarding the alleged apology. The chairman of the parish council mistakenly states that the first mention of an apology was during my meeting with the subject member. This is not in fact the case. In his initial response to me regarding the allegation, the subject member submitted statements from members of the public several of which made reference to the fact that he apologised. For reasons set out in my report I gave those witness statements very little weight and for reasons set out in this report I did not accept at that stage that the subject member had in fact apologised. There was no need for me to seek further evidence to support my view. Up until the morning of the hearing my view on the balance of probabilities was that the subject member

had not apologised and there was therefore no need for me to seek further evidence on that subject.

20. Finally, the chairman of the parish council asked why witnesses statements with no addresses and unsigned were accepted on the day of the hearing.

21. Proceedings before a standards committee are not court proceedings. Evidence in any format is acceptable. The statements were tended on behalf of the subject member by his solicitor. In the circumstances, I had no reason to doubt the authenticity thereof. The statements were clearly acceptable. The weight to be put upon them was ultimately a matter for the members of the committee. In my view the committee were fully entitled to place reliance upon them.

22. The parish council are not aggrieved at the decision of the Standards Committee that there has been a breach of the Code of Conduct but are aggrieved at the finding of fact that the subject member did apologise at the February meeting. The parish chairman's letter is adamant that the subject member did not request an apology to be included in the minutes of the meeting of the 13 February. That stance is not entirely consistent with the email from the parish clerk to me of the 6 August 2014. The first point to be taken from that email is that the clerk acknowledges that due to the noise at the meeting in February she may have missed the subject member's apology and therefore did not minute it. I acknowledge that it would have been open to the subject member to raise the issue of the apology in his email comments on the minutes but the fact he did not do so does not mean that he had not given an apology at the February meeting. There was a lot of controversy at that meeting regarding advice I had given concerning members' interests. This is clearly what was at the forefront of the subject member's mind when he was commenting upon the minutes. The parish clerk in her email states "there was no mention of an apology being added in the email he sent to me on 16 February ... or as far as I can recall at the meeting". The parish clerk goes on to ask why the parish council had approved the minutes. To my mind the voting reported by the parish clerk (all in favour save for the subject member who abstained) is consistent with the position taken by the subject member and one of the two councillors who made a late statement on his behalf namely that they were told (correctly) that minutes do not record verbatim everything which is said at a meeting. The subject member's abstention is consistent with him not disagreeing with the accuracy of what was there but not being satisfied that the minutes were complete.

## Risk Analysis

23.

Risk	Likelihood	Impact	Mitigating actions
A person dissatisfied with the decision of	It is doubtful whether the parish council	1, there is virtually no prospect of an	The committee should formulate a suitable response to

<p>the Standards Committee may seek to quash that decision by way of judicial review.</p>	<p>has a legal standing to bring such proceedings. Even if it did have such standing, proceedings for judicial review are expensive and given the risk of an adverse costs award if the application were unsuccessful it is unlikely that the parish would risk embarking on such a course of action to secure what at best is likely to be a recommendation from the Standards Committee that an apology be tendered by the subject member.</p>	<p>application for judicial review being successful.</p>	<p>the letter of the 8 September 2014 from the parish council.</p>
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**5**

**Title: MONITORING OFFICERS' CONFERENCE  
ON STANDARDS**

**Author: Michael Perry, Assistant Chief Executive  
Legal, 01799 510416**

Item for decision

### **Summary**

1. This report is to inform members of a conference organised by Hoey Ainscough Limited and Wilkin Chapman Golden Solicitors on Standards for Monitoring Officers.

### **Recommendations**

2. That members determine whether to recommend any amendments to the Code of Conduct to Full Council.

### **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	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

6. Hoey Ainscough Limited is a company which operates in the sphere of ethical governance providing support to local authorities. The company was formed by Paul Hoey and Natalie Ainscough following the dissolution of Standards for England. Mr Hoey was a senior legal advisor with Standards for England from its inception. Ms Ainscough had 6 years' experience at Standards for England in a key policy role.
7. The conference covered a number of topics all of which were interesting but unfortunately not all of which were particularly relevant or useful.
8. There was some discussion about the lack of effective sanctions under the new arrangements. Although it is acknowledged that sanctions were far more severe under the old regime, with the possible suspension of up to 12 months or a disqualification for up to five years from being a councillor, Mr Hoey queried whether the sanctions under that regime were any more effective than at present. He cited the case of Cllr Bleakley of Wigan Council. In September this year it was reported that Cllr Bleakley had breached the Code of Conduct in that he had used his council laptop to access pornography on the internet and had used his council mobile phone to call premium rate sex chat lines running up a bill of £2,400. He had also used the council phone to send text messages with sexually explicit, sexist and discriminatory material to colleagues. He was also found to have deliberately altered an email in an attempt to jeopardise a senior employee's job. The headline in the local paper read "Watch porn, call sex lines, troll women – you WON'T get fired at Wigan Council". Clearly the council can and will recover the £2,400 improper expenditure and has removed the council laptop and telephone from Cllr Bleakley's possession. Cllr Bleakley was also required to undergo equal opportunities training which he has declined to accept. Whilst there is no effect sanction in respect of these matters, Mr Hoey reported that in 2004 Cllr Bleakley was disqualified for three years from being a councillor after he verbally abused a female cleaner at Wigan Town Hall. He was suspended again for six months in 2010 for bullying a female Community Safety Officer. Those sanctions, far more effective than a censure, do not appear to have proved a deterrent to Cllr Bleakley. Experience at Uttlesford is that councillors do take allegations of a breach of the Code of Conduct very seriously notwithstanding the absence of any meaningful sanction.
9. There was some discussion as to when the Code of Conduct applies to members. Mr Hoey referred to a case where a new mayor and mayoress were barred from all the pubs in their town following alcohol fuelled celebrations hours after they were sworn into their new roles. It is alleged that the mayor is alleged to have shouted "don't you know who I am?" and threatened to use her new powers to shut down the first pub she was escorted from. It was determined that the Code of Conduct did not apply to her in those circumstances as the Localism Act provides that local authorities must adopt a Code dealing with the conduct that is expected of members of the authority when they are acting as members. The Uttlesford Code of Conduct is inconsistent with the legislation in that respect in that it effectively adopts the definition of "official capacity" under the previous standards regime.

Paragraph 2 of the Uttlesford Code of Conduct provides that “you must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority. The underlined words are not reflected in the legislation. However legislation provides minimum requirements for a Code of Conduct. It is open for authorities to adopt more stringent requirements than those required by the legislation. I do not therefore consider that the Uttlesford Code of Conduct is unlawful. Members are asked to take a view as to whether they wish to recommend to Full Council that the Code of Conduct should more closely resemble the legislation or make no recommendation in which case the Code will remain unchanged.

10. There was discussion concerning criminal convictions which councillors may receive. Where a member has been sentenced to a term of six months or more imprisonment they automatically cease to be a member. Other crime however, would not affect their standing. In one case cited a councillor whose wife swindled the authority of £25,000 taxpayers’ money in a two year benefit fraud but was not sent to jail and the member therefore remained a councillor. The previous Code of Conduct did not extend to councillors’ criminal activity. Legislation was proposed to incorporate criminal conduct but never found the statute book. The area is fraught with difficulties and I would suggest that no variation to the Code should be suggested here.
11. Jonathan Gooldon of Wilkin Chapman Gooldon is a solicitor who specialises in standards issues and who is also an independent person with two local authorities. His opinion was that the independent person is there to be a provider of views to subject member and the committee but that the independent person is not an advisor or decision maker. Effectively the role of the independent person is to provide quality assurance. Mr Gooldon did not favour an arrangement where an independent person may be seen as being a confidant of the Monitoring Officer. He is also opposed to independent persons being members of the Standards Committee. He felt the views from the independent person should not be seen as being a decision nor should it be seen to be an advisor of the subject member, the investigating officer or the complainant. Surprising from my perspective Mr Gooldon advocated that there should be only one independent person allocated to each case. He was not in favour of independent persons being allocated different roles within a case which is the practice we adopt here. During lunch I challenged Mr Gooldon on this because of a perceived conflict of interest between the role of giving views to the subject member and giving views to the committee. Mr Gooldon appeared to be comfortable with this on the basis that he would make it clear to a subject member at the outset that he was only giving his views based upon what he is told by the subject member and that these may change when he receives the report from the investigating officer and is required to give his views to the committee. I think our current system of potentially involving independent members in separate roles within the investigation works well but it is for members to determine whether to continue with that arrangement or make amendments to it.

12. We were directed to some interesting cases from the Information Commissioner and the First Tier Tribunal on the application of the Freedom of Information Act and Data Protection Act. It would appear from these cases that where there has been a finding of no breach of the Code most information is protected from public disclosure. This accords with our practice of not publishing information regarding investigations where there has been a finding of no breach of the Code unless requested to do so by the subject member.
13. Under the previous standards regime there were frequently arguments about the fairness of process based upon Article 6 of the European Convention on Human Rights which guarantees a right to a fair trial where there are determinations of civil rights. Curiously however, where the only possible sanction is a censure, civil rights are not being determined and therefore Article 6 does not apply. This will not prevent a decision being attacked by way of an application for judicial review if the process was considered to be unfair.
14. A speaker from one authority said that his council did not investigate allegations of a breach of the Code of Conduct. If they considered that the case was worthy of investigation it went straight to a hearing. I doubt whether it is consistent with the Localism Act which requires authorities to have in place arrangements whereby complaints can be investigated. That particular authority also has an issue with regard to its own Code of Conduct which requires that members should not use their position to secure an advantage or disadvantage for another. This would not be breached if an attempt to secure an advantage or disadvantage proved unsuccessful. Fortunately our Code does cover attempts in these situations.
15. It was stressed that it was not necessary for investigations to be gold-plated. They need to be proportionate to the likely sanction. The important thing is that at the end of the procedure the complainant and the subject member should consider that the process has been fair.

## **Risk Analysis**

16. There are no risks arising from this report.

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**6**

**Title: REVIEW OF THE PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE**

**Author: Michael Perry, Assistant Chief Executive Legal, 01799 510416**

Item for decision

### **Summary**

1. It is now just over two years since the committee adopted a procedure for dealing with complaints regarding the Code of Conduct. It is therefore appropriate to review the procedure in light of experience gained over that time.

### **Recommendations**

2. That members decide whether to amend the procedure for dealing with complaints.

### **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	None
Sustainability	None
Ward-specific impacts	None

Workforce/Workplace	None
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## Situation

6. Prior to July 2012 statutory instruments lay down a rigid procedure for dealing with complaints regarding a breach of the Code of Conduct and hearings arising therefrom. The procedure was over-bureaucratic and led to the system being brought into disrepute. When adopting new procedures regard was had to the old regime but the procedures were streamlined with a view to reducing the delays that were involved.
7. Since the adoption of the new regime the council has received 17 allegations of a breach of the Code of Conduct. Nine of these were not subject to investigation. In five cases, there was a finding of no breach of the Code of Conduct. In two other cases, breaches of the Code of Conduct were found but no action was taken by the committee following a hearing. One further case has resulted in the finding of a breach of the Code of Conduct and at the time of the preparation of this report the committee hearing has not yet taken place.
8. Comments by subject members or their representatives and by complainants have suggested that the current procedures are not perhaps as clear as they should be. I therefore attach a copy of the current procedures with tracked changes for members' consideration. I would comment upon the amendments as follows.
9. In paragraph 5, I have incorporated a minor amendment to show that conversations to consider investigating complaints can take place by telephone.
10. In paragraph 6, I have incorporated an amendment to stress that the Code only applies when members are acting in an official capacity. I do not believe the public readily understand this concept and we have received complaints about the conduct of members in their private capacity where the Code of Conduct clearly does not apply.
11. In paragraph 7b I have made amendment to indicate that a complaint to the Standards Committee should be a last resort. It is not uncommon to receive a complaint that a member has defamed a member of the public or a fellow member. Defamation is a matter for the law courts and not for the Standards Committee.
12. I have inserted a new provision as paragraph 7d. The Adjudication Panel, the First Tier Tribunal and the High Court have all placed a great deal of weight upon the right of freedom of expression under Article 10 of the European Convention on Human Rights. Many allegations of failing to treat somebody with respect will fail because of the protection given by this provision. Where it is clear that this protection would provide a defence there appears little purpose in conducting an investigation.

13. In paragraph 13 the amendments are necessary to reflect the change to the policy adopted by members previously as set out in paragraph 12 where members decide that a hearing would not be necessary merely to receive a report advising the committee that there was no breach of the Code of Conduct.

14. At the most recent hearing the committee had, the subject member was represented by a solicitor who wished to call a large number of witnesses to give live evidence. Under the new Standards regime such an approach would be highly disproportionate. Had the committee agreed to hear evidence from the witnesses who were being proffered it is unlikely that the hearing could have been finished in one day. I am therefore suggesting a procedure which places the emphasis on paperwork with live evidence being given only in exceptional circumstances. As a matter of law, hearsay evidence is always admissible in civil proceedings but the weight given to it will be a matter for the committee conducting the hearing.

### Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
A person aggrieved by a decision of the Standards Committee may challenge that decision by judicial review.	1, the consequences of an adverse finding by the Standards Committee are such that it is unlikely to justify the expense of such proceedings.	2, whilst it is unlikely that the council would lose a judicial review in respect of a decision of the Standards Committee properly advised and that the council would be awarded its costs there would nevertheless be some resource used in defending the proceedings and some expenditure would not be covered by the costs award.	That the Standards Committees ensure that hearings are dealt with fairly and proportionately.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

## **PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE**

1. The Standards Committee can only investigate complaints of a breach of the Code of Conduct by individual members. It cannot investigate complaints against the whole council, the cabinet, committees or council officers.
2. Complaints must be in writing. If a complainant is unable to make a complaint in writing personally council officers will assist. The council will supply a complaints form to assist complainants in making their complaint but its use is not compulsory and a letter or e-mail complaint will suffice.
3. Upon receipt of a complaint an acknowledgement will be sent to the complainant. The subject member will be informed that a complaint has been made and be told the substance of the complaint unless in the opinion of the Monitoring Officer to do so could prejudice a fair investigation.
4. The complainant will be offered the opportunity to advance reasons why his or her name should not be disclosed to the subject member and will be informed that if no response is received within 10 working days the subject member will be informed of the complainant's identity. In the event that the complainant does advance reasons as to why his or her name should not be revealed to the subject member at that time the Monitoring Officer will consult with an independent person. In the event that following such consultation the Monitoring Officer decides that the complainant's identity should be revealed then the complainant will be notified of that decision and will be given a period of 5 working days to decide whether to proceed with the complaint. If the complaint is not withdrawn the subject member will be informed of the complainant's name.
5. The Monitoring Officer or his or her deputy will consult with an independent person with regard to all complaints received. Such consultation may be at a meeting, [by telephone](#) or [in](#) writing. Following such consultation the Monitoring Officer or his or her deputy will take one of the following decisions:-
  - a. To take no action

- b. To take action other than an investigation (e.g. to ascertain whether the subject member may be willing to apologise, undergo training or undergo mediation)
- c. To require an investigation

Whilst the Monitoring Officer is solely responsible for taking the decision, where the independent person has expressed a view that the allegation should be investigated the Monitoring Officer may refer the matter to the Standards Committee if he or she is of a view that an investigation is unnecessary and the Standards Committee will then determine how the allegation should be dealt with.

- 6. Not all complaints will be passed for action. The subject of the complaint must have been a member of the council at the time the facts alleged occurred. [The Code of Conduct must also apply to the acts complained of. Members are only bound by the Code of Conduct when they are conducting the business of the council \(including acting as a councillor\) or when they are acting, claiming to act or give the impression that they are acting as a representative of the council. Conduct by members in their private capacity does not engage the Code of Conduct.](#) The complaint, if proved, must also be capable of amounting to a breach of the Code of Conduct. No findings of fact are made at this stage. The decision as to whether to investigate a complaint is made on the assumption that the facts as alleged are true. Findings of fact are only made after an investigation and report to a sub-committee.
- 7. Even when the aforementioned conditions are satisfied this does not necessarily mean that a case will be passed for action. There is a balance to be struck between the desirability of ensuring that issues regarding the Code of Conduct are dealt with appropriately against the costs involved of carrying out an investigation and hearing. The Standards Committee are of the view that there is little public benefit in investigating allegations which are not sufficiently serious, politically motivated, malicious or vexatious. In reaching a decision whether to refer a case for action the following criteria will be applied:-
  - a. Complaints which are not supported by sufficient information are unlikely to be referred.

- b. If the complaint has been or should be investigated or dealt with elsewhere further action is unlikely to be justified.
  - c. Stale complaints are unlikely to be referred. The Standards Committee expects that complainants would normally make their complaint within six months of the relevant facts coming to light.
  - ~~e~~.d. Regard will be had to the very high degree of protection given to freedom of expression by Article 10 of the European Convention on Human Rights
  - ~~d~~.e. Where a member who is the subject of a complaint has acknowledged the breach of the Code and made a sincere apology the complaint is unlikely to be referred unless it is considered that such apology would be insufficient.
8. Where a case is accepted for investigation the Monitoring Officer will arrange for an investigation to be carried out.
  9. At the conclusion of the investigation the investigating officer may prepare a draft report which he sends to the complainant and the subject member for comment. The investigating officer may or may not amend the report in the light of representations received. Alternatively the investigating officer may in his or her sole discretion proceed to a final report.
  10. In the final report the investigating officer will set the facts which have been agreed and any conflicting evidence he has received from the complainant, the subject member and any witnesses. The investigating officer will make any findings of fact and state whether in his or her opinion the facts as found constitute a breach of the Code of Conduct.
  11. Where there has been a finding on no breach of the Code of Conduct the report shall be circulated to all members of the Standards Committee. Any member shall be entitled to make a request to the Monitoring Officer that a meeting of the Standards Committee be convened for the purpose of a hearing to consider the report. If no member of the Standards Committee requests a hearing within 10 working days of the report being circulated the findings of the investigating officer become final and the decision stands.

12. In the event that a member of the Standards Committee does request a hearing the hearing the public and press shall be excluded from the hearing under s.100I and paragraphs 1 and 2 Schedule 12A Local Government Act 1972 unless the subject member requests otherwise it being generally considered in the public interest to apply the exemption as the member's right to privacy until such time as the findings of the investigating officer have been reversed outweigh the public interest in making the information available.

13. Where the investigating officer finds that there has been a breach of the Code of Conduct or where a member of the Standards Committee has requested a hearing under paragraph 12 above there will be a hearing to consider the complaint and the investigating officer's report. ~~The~~ Unless paragraph 12 above applies the hearing will normally be held in public.

14. The procedure for a hearing will be as follows:

- a. The investigating officer will usually have interviewed all relevant witnesses and a summary of their evidence will appear in the report
- b. Live evidence will therefore not usually be given at the hearing
- c. The subject member may apply for permission to call live rebuttal evidence. The Monitoring Officer (or his or her deputy if the Monitoring Officer carried out the investigation) shall determine with the Chairman of the Standards Committee (or another voting member of the Standards Committee in the absence of the Chairman) whether live witness evidence will be permitted.
- d. Any request for permission to call live evidence shall be in writing, state the name of the witness concerned and give a summary of the evidence the witness is likely to give.
- e. Where a witness has given evidence which is referred to in the investigating officer's report and the subject member wishes that person to be subject to cross examination at the hearing the subject member may request the investigating officer to endeavour to arrange for that witness's attendance. The subject member should however be aware that witnesses cannot be required to attend Standards Committee hearings. Further the investigating officer may decide not to request the witness to attend. In either event the evidence is admissible but when

evidence is in dispute and is no subject to cross examination the Committee will need to determine what weight to give to it.

~~\*f. The complainant and others may be invited to attend and give evidence.~~ The subject member will have the opportunity of attending and addressing the hearing and calling evidence if having first been given permission to do so.

~~13.15.~~ 15. Having received evidence and hearing submissions the Committee will announce its findings of fact, its findings as to whether there has been a breach of the Code of Conduct and what sanction (if any) should apply.

~~14.16.~~ 16. The range of sanctions available is:-

- a. To find that no further action is required.
- b. To censure the member (this is the only sanction available if the member is no longer a councillor at the date of the hearing)
- c. To recommend that a member's access to council premises or the use of council resources be restricted providing that such restrictions do not prevent the member performing his functions as a councillor
- d. To recommend that the member makes a written apology in a form acceptable to the Standards Committee.
- e. To recommend that the member undertakes specified training.
- f. To recommend that the member undertakes specified conciliation or mediation.
- g. To recommend that the member be removed from a committee or committees of the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- h. To recommend that the member be removed from an outside body or bodies to which the member has been appointed by the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- i. To recommend that the member be removed from the Cabinet (this can only be done by the Leader of the Council)

j. To require the decision of the Standards Committee to be published.

~~15-17.~~ 17. A finding that there has been no breach of the Code of Conduct (whether by the investigating officer or by the Standards Committee) shall only be published if the subject member requests that this should be done.

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**7**

**Title: INDEPENDENT MEMBERS**

**Author: Michael Perry, Assistant Chief Executive  
Legal, 01799 510416**

Item for decision

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## Summary

1. This report is to inform members of the resignation of one of the independent members from the Standards Committee.

## Recommendations

2. That:
  - (a) Members consider the job description and Person Specification for Independent Persons and determine whether to recommend any changes thereto.
  - (b) Members recommend to Full Council that a sub-committee of the Council be appointed for the purpose of recruiting new independent persons.
  - (c) That members recommend appointing two independent persons as soon as possible.

## Financial Implications

3. There is no budget for the Standards Committee. However, it will be possible to fund the necessary costs by a virement from Legal Services budget.

## Background Papers

4. Job description and person specification for the role of independent person (attached).

## Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None

Human Rights/Legal Implications	As set out in the body of this report.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

6. Under the Localism Act 2011 councils have a duty to promote high standards of conduct on the part of its members. There is no requirement under the Act for a council to appoint a Standards Committee but in practice the vast majority of councils have done so.
7. The Act also requires that there should be at least one independent person appointed. The statutory functions of the independent person are to give their views to a council before it makes a decision on an allegation that it has decided to investigate and whose views may be sought by the council in relation to an allegation which it has decided not to investigate or by a member who is the subject of a complaint. The latter role extends to parish councillors whose parishes are within the district.
8. In practice Uttlesford has placed greater weight on the role of the independent person than that required by statute. The council has appointed three independent persons and when an allegation of a breach of the Code is received they are allocated to the functions of:
  - (a) Working with the Monitoring Officer in determining whether or not the investigation should be investigated.
  - (b) Being available to give their views to the subject member, and
  - (c) Being available to give their views to the committee if a hearing is required.

The independent persons fulfil these roles in rotation.

9. The independent persons are also non-voting members of the Standards Committee and attend on a regular basis assisting the Standards Committee in formulation of policy.
10. Due to relocation to a different part of the country, one of the independent persons has resigned. This gives rise to an immediate vacancy. Whilst it would be possible to continue to work with only two independent persons, difficulties may arise if one of those persons had a conflict of interest with regard to any complaint which has been received.
11. With regard to the remaining two independent persons I am pleased to say that one has indicated that she is prepared to accept re-appointment.

However, the other had indicated that he intends to stand down after the elections in May 2015.

12. When appointing independent persons after the adoption of the new Code of Conduct the council received a large number of applications from high quality applicants. However, the process of advertising the post, short-listing and interviewing is time-consuming. I therefore consider it prudent that if members agree that a new independent person should be recruited as soon as possible then it would be appropriate to appoint two candidates. This will enable both to obtain experience of being an independent person prior to the departure of one of the remaining two in May 2015.

### Risk Analysis

13.

Risk	Likelihood	Impact	Mitigating actions
The council fails to appoint independent persons.	1, past experience is that it should not be difficult to attract suitable candidates.	3, the council have difficulty performing its functions with regard to standards under the Localism Act.	Council go out to advertisement and appoint as soon as possible bearing in mind that there may well be other authorities advertising for independent persons in May 2015.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

## **JOB DESCRIPTION**

### **For Independent Members of the Standards Committee**

#### **Main Role**

1. To give the Council advice on adopting a local Code of Conduct.
2. To monitor the effectiveness of the Code.
3. To train Members on the Code or to arrange for such training.
4. To promote and maintain high standards of conduct for Members.
5. To help Members to follow the Code of Conduct.
6. To receive and consider appeals from decisions of the Monitoring Officer on requests for dispensations from compliance with the Code.
7. To attend meetings of the Standards Committee on a regular basis.
8. To assist the Monitoring Officer to determine whether allegations of a breach of the Code of Conduct should be investigated
9. To participate in hearings to consider allegations of a breach of the Code of Conduct.
10. To be available to give their views to Members of the District Council and Members of Town and Parish Councils within the district who are the subject of allegations that they may have breached the Code of Conduct.
11. To undertake the above referred to functions with regard to Town and Parish Councils within the District.

## **PERSON SPECIFICATION**

For independent members of the Standards Committee

### **Essential Requirements**

A person may be an independent representative on a Standards Committee only if he or she:

1. has not been a Member, co-opted member or employee of the Council or of any town or parish council in the district within the five years immediately before the date of appointment.
2. is not a Member, co-opted member or Officer of any town or parish council within the district nor a relative or close friend of any such person.
4. is able to make objective judgements concerning allegations of misconduct against Council Members.
5. has a positive commitment to high standards of conduct in local government and to assist Council Members to work within the ethical framework.

### **Desirable Criteria**

1. Familiarity with ethical dilemmas.
2. Experience of Committee work.
3. Questioning skills.
4. An assertive nature
5. Not a member of any political party.
6. Experience of working in an advisory capacity.
7. Experience of working in a regulatory capacity or within such a framework.