

**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**

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## **Summary**

1. This report is to inform members of a conference organised by Hoey Ainscough Limited and Wilkin Chapman Goolden 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.