

Committee: STANDARDS TASK GROUP

Agenda Item

Date: 4 August 2015

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**Title: REVIEW OF THE CODE OF CONDUCT,
PROCEDURES AND GUIDANCE**

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Item for decision

Summary

1. At its meeting on the 6 July 2015 the Standards Committee appointed this task group to review the Code of Conduct and procedures in relation to allegations of breaches of the Code and to make recommendations accordingly. The group is to report back to the Standards Committee by the 21 March 2016. This report is to provide members with options and to deal with specific points which have been raised.

Recommendations

2. Members determine the approach they wish to take to reviewing the Code, guidance and procedures leading up to a recommendation to the Standards Committee.

Financial Implications

3. None.

Background Papers

4. None.

Other Papers referred to by the Author in the preparation of this report

5. (a) reports to and minutes of the Standards Committee meetings on the 18 July 2011, 14 November 2011, 9 January 2012, 12 March 2012, 14 May 2012 and the 13 October 2014 all available online on the committee section of the council's website.
- (b) Uttlesford District Council's Code of Conduct available at <http://www.uttlesford.gov.uk/CHttpHandler.ashx?id=1272&p=0>
- (c) The Code of Conduct of Uttlesford District Council, a Guide for Members – October 2012 available on line at <http://www.uttlesford.gov.uk/CHttpHandler.ashx?id=4508&p=0>
- (d) Procedure for dealing with complaints to the Standards Committee available on line at <http://www.uttlesford.gov.uk/CHttpHandler.ashx?id=2597&p=0>

- (e) Section 111 Local Government Act 1972 (copy attached).
- (f) Section 1 Localism Act 2011 (copy attached).
- (g) Part 1 chapter 7, Localism Act 2011 (redacted and full copies attached. The redacted version omits matters not of concern to this council but I am aware that some members prefer the full text).

Impact

6.

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

- 7. The Localism Act 2011 (“the Act”) received Royal Assent on 15 November 2011. The Act abolished the standards regime established by the Local Government Act 2000 which was replaced by Part 1, Chapter 7 of the Act. That part of the Act came into effect on 7 June 2012.
- 8. The Localism Bill as originally presented before Parliament did not contain any provision for local authorities to adopt a Code of Conduct. The Constitution Task Group considered this was not appropriate and recommended that the council should adopt a voluntary Code of Conduct. It therefore requested the Standards Committee to consider an appropriate format for a voluntary code. The Standards Committee minutes for the meeting on the 18 July 2011 refer. The Standards Committee carried out this work in the period leading up to its meeting on the 12 March 2012. By that stage the Bill had changed to impose a duty upon relevant authorities to adopt a Code of Conduct. At its meeting on the 12 March 2012 the committee resolved to recommend the adoption of a Code of Conduct to Full Council to take effect once the Act came into force. Shortly before that recommendation was considered by Full Council the Department of Communities and Local Government and the Local

Government Association both published draft Codes of Conduct. This was unexpected as both had indicated that no guidance would be issued. The matter was therefore remitted to the Standards Committee for it to determine whether these drafts in any way affected the recommendation that it wished to make to Full Council. At its meeting on the 14 May 2012 the committee considered the two drafts issued and concluded they were not appropriate and proceeded with its original recommendation to Full Council. The council unanimously adopted the Code as proposed by the Standards Committee without amendment. The Standards Committee further considered the Code of Conduct and the procedures at its meeting on the 13 October 2014 and concluded that amendment to neither was required.

9. The Act contains two requirements for a Code of Conduct. The first is that when viewed as a whole the Code of Conduct is consistent with principles set out in section 28(1) of the Act. These are selflessness; integrity; objectivity; accountability; openness; honesty and leadership. The second requirement is that an authority must secure that its Code of Conduct includes the provision which the authority considers appropriate in respect of the registration and disclosure of pecuniary interests and interests other than pecuniary interests. Leaving aside these two requirements the content of the Code of Conduct is left entirely to the discretion of the relevant authorities. Members' attention is particularly drawn to the minutes of the Standards Committee meeting on the 9 January 2012 when the committee painstakingly considered the draft Code of Conduct it proposed recommending to Full Council against the section 28(1) principles and demonstrated how viewed as a whole the Code was consistent with them.
10. For the purposes of adopting a Code of Conduct, relevant authorities include district councils and parish councils. By virtue of section 27(3) of the Act a relevant authority that is a parish council may comply with its duty to adopt a Code of Conduct by adopting the Code of the council of the district within which the parish is situated. However, there is no obligation upon them to do so. So far as I can ascertain 49 of the parish councils within the district do subscribe to the Uttlesford Code of Conduct. One does not having adopted its own Code earlier this year. I do not have sufficient information with regard to three parish councils to be able to say definitively whether they have adopted the Uttlesford Code or not. I am aware that one parish council was recently considering revising its Code but that the proposal to do so was withdrawn after advice from me that some of the amendments suggested were unlawful. For those parishes that resolved to adopt Uttlesford's Code of Conduct that resolution relates to the Code of Conduct in existence at the time they resolved to adopt it. If the Code of Conduct is varied then parish councils would need to resolve to adopt the new Code should they wish to do so.
11. I turn now to the specific issues I have been asked to address in this report. The first suggests that the Code does not clearly state what pecuniary and non-pecuniary interests are. I would recommend that members consider the wording of the Code. Members may not make amendments to the definitions of disclosable pecuniary interests as these are prescribed by a statutory instrument made under the Act. Members may however, propose

amendments to other pecuniary interests and non-pecuniary interests which need to be registered and declared.

12. I have been asked to consider how all of the requirements of the Nolan principles could be incorporated. It is perhaps worth mentioning that in the 1997 report of the Committee on Standards in Public Life (dealing with local authorities) Lord Nolan recommended that there should be a statement of General Principles of Conduct for Local Councillors approved by parliament AND a Code of Conduct. The former should inform the latter. Consistent with the recommendations of Lord Nolan the government issued the Relevant Authorities (General Principles) Order 2001 which effectively took the Nolan principles and sub-divided them to give 10 statements. Separately the government issued the Local Authorities (Model Code of Conduct) (England) Order 2001. The latter instrument was replaced in 2007 and that and the General Principles Order were both repealed by the Act. The current requirements of s.28 of the Act are consistent with Lord Nolan's recommended approach.
13. As indicated above, read as a whole the Code of Conduct does comply with the section 28(1) principles. The difficulty with relying upon the Nolan principles as freestanding elements of a Code of Conduct is they are very subjective. In the event of an allegation of a breach of the Code being made, it is difficult to conceive how one would demonstrate evidentially that a member had acted in a way inconsistent with any one or more of the section 28(1) principles. However, the Code gives clear requirements. For example, with regard to the principle of openness the Code specifically provides that members must not prevent another person from gaining access to information to which that person is entitled by law. This would include information to which an individual is entitled under the Freedom of Information Act, Environmental Information Regulations or Data Protection Act. Members attention is again drawn to the exercise carried out by the Standards Committee in aligning the Code of Conduct to the section 28(1) principles on the 9 January 2012. However, members may of course suggest amendments to the Code if they consider that sufficient emphasis is not placed upon the section 28(1) principles.
14. I have been asked to consider how to eliminate the need to use FOI requests for councillors to obtain council information. So far as I am aware this issue is specific to one parish council only. Information held by parish councils is held by the council as a corporate body. Parish councils are subject to the Freedom of Information Act, Environmental Information Regulations and Data Protection Act. Even where information is exempt from disclosure to the public, councillors are entitled to information at common law on a "need to know" basis. This was the decision of the High Court in the case of Birmingham City Council – v - O. The district council has no power to enforce those rights.
15. Councils are creatures of statute. As such they are different from natural persons. Natural persons may legally do anything which the law does not prohibit them from doing. Statutory bodies can only do what the law gives them the power to do. I have considered very carefully the powers of councils.

There are numerous statutes giving local authorities power to do various things. However, the only power with regard to standards is that contained in Part 1, chapter 7 of the Act. This does not contain any power to exercise any control over parish councils as opposed to individual parish councillors. Section 27(2) of the 2011 is clear that the Code of Conduct is that which is “expected of members and co-opted members of the authority when they are acting in that capacity”.

16. I have considered section 111 of the Local Government Act 1972. This empowers a local authority to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of their functions. The courts have held that this power only exists in relation to primary functions of an authority. It is no part of the functions of a district council to hold a parish council to account (as opposed to parish councillors) nor is it part of the functions of the district council to enforce the legislation relating to the disclosure of information. That is the function of the Information Commissioner. Section 111 of the 1972 Act is therefore of no avail.
17. I have also considered the power of general competence contained in section 1 of the Localism Act 2011. This again does not assist. The power of general competence is power to do anything that individuals generally may do. Individuals have no control over parish councils. The section will not therefore empower the district council to take action in respect of the failure on the part of a parish council to disclose information. In the event that a parish council resolved not to disclose information which it would be obliged to disclose under legislation, then there would be a strong case that the members who voted for such a proposal had brought the council into disrepute by lessening the public confidence in the ability of the council to perform its functions as such. However, such a finding would not secure the release of the information. All the Standards Committee could do would be to censure the members concerned and that could only be achieved if the council concerned had delegated the power to impose sanctions to the district council. Only 14 of the 54 councils in the district have delegated that power.
18. Under our procedures matters which should be dealt with elsewhere would not be the subject of an investigation. Complaints to the Information Commissioner are the appropriate way forward where a parish council refuses to release information. If a parish council purports to rely upon an exemption then that can also be challenged with the Information Commissioner. The Information Commissioner does have power to compel parish councils to release information which ought to be released.
19. I have been asked to consider the area of sanctions. As mentioned in the preceding paragraph, local authorities are creature of statute and have no power to impose sanctions as there is no statutory power to do so. s.28(7) of the Act makes it clear that failure to comply with a Code of Conduct may only be dealt in accordance with arrangements adopted by the authority under the Act which do not include power of imposing a sanction. It has been suggested that the council could “require convicted councillors to remind their council of the ruling against them at the start of each meeting”. Whilst that provision could be written into the Code of Conduct there can be no sanction (other than

a censure) for failing to do so. The government's view was that the ultimate determination on the fate of councillors should lie with the electorate. The only sanction completely within the Standards Committee's control is a censure. Anything else is limited to a recommendation with no sanction for the failure to adopt the recommendation.

20. It had been suggested there should be a comprehensive set of procedures to follow with no deviations. I would invite members to consider the procedures currently in place and determine whether they consider the same to be adequate. It has further been suggested that transcripts of telephone witness statements must be sent to the person to sign to say it is a true record of what was said and that no unsigned or uncorroborated letters should be included. There is no objection to including in the procedure a requirement that transcripts of telephone witness statements should be sent to the witness for approval. However, I would suggest that it would not be appropriate to have a rule that unsigned or uncorroborated letters should not be included in evidence before the committee. It is important the committee has all the evidence which is available to it. In my experience where statements have been sent to witnesses for approval, they are frequently not returned, no further comment is made and nothing further is heard from the witness. The weight which is given to such evidence is entirely a matter for the committee. However, in my view it would be wrong to exclude the consideration of that evidence from the deliberations. Such evidence is legally admissible and I can see no good grounds in law for excluding it.
21. It has been suggested that a decision as to whether or not to investigate a complaint should be taken by two independent members of the Standards Committee as well as the Monitoring Officer as opposed to one independent person and the Monitoring Officer as at present. It is suggested this will make the process more transparent.
22. Under the 2011 Act the council must take the views of an independent person before it reaches a decision on an allegation of a breach of the Code of Conduct it has decided to investigate. This is the role of attending the committee when receiving a report from an investigating officer. The Act also provides that the district council may seek the views of an independent person in other circumstances. Our procedure provides for the independent person to be involved with me in considering whether or not a complaint should be investigated. Finally the Act provides that an independent person must be available for a subject member to seek his or her views. These are three distinct functions which give rise to potential conflicts of interest. For that reason when a complaint is received one independent member will work with me on determining whether to investigate the complaint; a further independent member will be assigned to be available to the subject member and the third independent person will be assigned to give his or her views to the committee in the event that a hearing is required. These allocations are made in strict rotation. If two independent persons were to take part in the assessment process rather than one, then additional independent members would be required to ensure that a conflict of interest does not arise although the appointment of additional independent persons may reduce their workload to

the extent that the role becomes unattractive to those in office. Doubtless the independent members will express a view on this issue.

23. I would remind members of the fact that the criteria against which complaints are assessed are published in our procedures and are therefore transparent. In the event that the independent person and I both agree that a complaint should or should not be investigated, then clearly there is no issue. If there were to be a difference of views our protocol is that should I determine that a complaint should be investigated, then I may override the views of the independent person who considers it should not. In the event that I consider a complaint should not be investigated but the independent person disagrees with me, then I have an option of either carrying out an investigation or referring the matter to the Standards Committee for consideration as to whether the matter should be investigated or not. In practice neither of these scenarios has ever come about. It is right to say that on occasions independent persons and I have disagreed at the outset but after discussion we have always reached a consensus. Where a decision is taken not to investigate then the complainant is informed of our reasons.
24. It has been suggested there should be proper compulsory training sessions for all councillors and that both district and parish councillors should attend at least one session when elected and when re-elected. Whilst I agree wholeheartedly with the sentiment it is entirely unenforceable. Councillors are not employees of their council but answerable to their electorate, not their councils. It will be possible to include a provision in the Code of Conduct requiring councillors to undergo training. Any councillor who failed to do so would then be in breach of that provision of the Code of Conduct. However, as has been previously illustrated all that the Standards Committee could do in such circumstances would be to censure the member concerned.
25. Finally I wish to comment upon the status of the independent persons. This council has always held the independent persons in the highest regard illustrated by the fact that the council appointed an independent person to be the chairman of the Standards Committee long before it was obliged to do so. Personally I find it highly regrettable that independent persons may not be voting members of the Standards Committee. That sentiment was certainly shared by the elected members of the former Standards Committee and I believe is shared by the current membership. In our representations to the government on the Localism Bill we lobbied for both voting independent members and an independent chairman. However s.28(8) of the Act provides that a person is not independent if they are a member or co-opted member of the authority. s.27(4) of the Act defines a co-opted member as someone who is not a member (i.e. not elected) but who is a member of a committee or sub-committee who is entitled to vote. Thus if the independent members were voting members of the Standards Committee this would disqualify them from being independent persons. As a chairman must have as a minimum a casting vote it follows that the council is also not permitted to have an independent chairman.

Risk Analysis

26. As the task group is not a decision making body, but is limited to making recommendations to the Standards Committee, there are no risks attached to this report.