

Committee: Standards Committee
Date: Wednesday 10 October 2012
Time: 6.30 pm
Venue: Bodicote House, Bodicote, Banbury, OX15 4AA

Membership

Councillor Andrew Beere	Councillor Fred Blackwell
Councillor Timothy Hallchurch MBE	Councillor Chris Heath
Councillor Russell Hurle	Councillor Mike Kerford-Byrnes
Councillor James Macnamara	Councillor Rose Stratford

AGENDA

1. **Apologies for Absence and Notification of Substitute Members**
2. **Appointment of Chairman for the Municipal Year 2012-2013**
3. **Appointment of Vice-Chairman for the Municipal Year 2012-2013**

4. **Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting.

5. **Requests to Address the Meeting**

The Chairman to report on any requests to address the meeting.

6. **Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

7. Minutes (Pages 1 - 4)

To confirm as a correct record the Minutes of the meeting of the former Standards Committee held on 10 May 2012

8. Co-option of Town/Parish Council Members (Pages 5 - 8)

Report of Head of Law and Governance / Monitoring Officer

Summary

To enable the Committee to consider whether it wishes to go through a process of co-opting Town/Parish Council members to the Committee.

Recommendations

The Standards Committee is recommended to:

- (1) Consider whether it wishes to co-opt Town/Parish Council members to the Committee and, if so, how many.
- (2) If Town/Parish Council members are to be co-opted, determine a process for the receipt and consideration of applications.

9. Appointment of Independent Persons - Update (Pages 9 - 12)

Report of Head of Law and Governance / Monitoring Officer

Summary

To enable the Committee to receive a verbal update on the latest position with regard to the appointment of Statutory Independent Persons so that recommendations can be made to the full Council meeting on 15 October 2012.

Recommendations

The Standards Committee is recommended to:

- (1) Receive a verbal update from the Head of Law and Governance/Monitoring Officer on the latest position with reference to the appointment of Independent Persons and agree recommended appointments to full Council.

10. Arrangements for Dealing with Complaints of Councillor Misconduct (Pages 13 - 32)

Report of Head of Law and Governance / Monitoring Officer

Summary

To enable the Committee to endorse, or amend as it sees fit, the arrangements for dealing with complaints of Councillor misconduct introduced with effect from 1 July

2012 by the Head of Law and Governance/Monitoring Officer under the delegated authority given by full Council in May 2012.

Recommendations

The Standards Committee is recommended to:

- (1) Endorse the arrangements for complaints of Councillor misconduct at Appendix 1, or to amend them as it sees fit.

11. Determination of Dispensation Requests (Pages 33 - 36)

Report of Head of Law and Governance / Monitoring Officer

Summary

To enable the Committee to agree a method for dealing with applications for dispensation which are received from members of Cherwell District Council.

Recommendations

The Standards Committee is recommended to:

- (1) Delegate authority to the Head of Law and Governance/Monitoring Officer in consultation with an Independent Person to determine requests for dispensation that are received from members of Cherwell District Council.

12. Exclusion of the Public and Press

The following reports contain exempt information as defined in the following paragraphs of Part 1, Schedule 12A of Local Government Act 1972.

1 – Information relating to any individual

3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Members are reminded that whilst the following item has been marked as exempt, it is for the meeting to decide whether or not to consider each of them in private or in public. In making the decision, members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion members should also be mindful of the advice of Council Officers.

Should Members decide not to make a decision in public, they are recommended to pass the following recommendation:

“That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraphs 1 and 3 of Schedule 12A of that Act.”

13. **Application for Dispensation** (Pages 37 - 42)

Exempt Report of Head of Law and Governance / Monitoring Officer

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Meeting

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.gov.uk or 01295 221589 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item. The definition of personal and prejudicial interests is set out in the constitution.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Natasha Clark, Democratic and Elections
natasha.clark@cherwellandsouthnorthants.gov.uk, 01295 221589

Sue Smith
Chief Executive

Published on Tuesday 2 October 2012

Agenda Item 7

Cherwell District Council

Standards Committee

Minutes of a meeting of the Standards Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 10 May 2012 at 6.30 pm

Present: Dr Sadie Reynolds (Chairman)
Derek Bacon (Vice-Chairman)

Councillor Andrew Beere
Councillor Fred Blackwell
Councillor Chris Heath
Councillor Russell Hurle
Councillor Douglas Williamson
Kenneth Hawtin
Councillor John Coley

Substitute Members: Councillor Ken Atack (In place of Councillor Timothy Hallchurch MBE)

Apologies for absence: Councillor Timothy Hallchurch MBE
Councillor James Macnamara
Councillor Rose Stratford
Councillor David Carr

Officers: Kevin Lane, Head of Law and Governance / Monitoring Officer
Natasha Clark, Team Leader, Democratic and Elections

12 **Declarations of Interest**

There were no declarations of interest.

13 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

14 **Urgent Business**

There was no urgent business.

15 **Minutes**

The minutes of the meeting held on 7 March 2012 were agreed as a correct record and signed by the Chairman.

The New Standards Regime - Proposed Arrangements

The Head of Law and Governance submitted a report which enabled the Committee to finalise its recommendations to Council on 16 May 2012 on the form of a code of conduct for members to be adopted with effect from the relevant legislative date (currently anticipated to be 1 July 2012) and on the nature, composition and terms of reference of the elected member body to be responsible for the arrangements that were statutorily required to ensure that the Council could investigate allegations of misconduct by district and parish councillors and determine an appropriate outcome. The report further sought to enable the Committee to recommend to Council the number of independent persons to be appointed, the appointment and remuneration process and the delegation of authority to the Monitoring Officer to enable the necessary legal arrangements to be introduced.

Code of Conduct

The Chairman reminded the Committee that at their March meeting, members had endorsed the proposed approach of the Monitoring Officers in Oxfordshire to seek to ensure, as far as practicable, the adoption of a common code at County, District and Parish levels.

In considering the proposed Oxfordshire Code of Conduct, some Members commented that it seemed relatively vague with no definition of exactly what pertained to breaking the Code. Other Members of the Committee countered that the Oxfordshire Code was very concise and was preferable to the LGA promoted Code. The Head of Law and Governance confirmed that the Code was currently being presented to all other Oxfordshire district councils and the county council for approval.

The Committee agreed that Council should be recommended to adopt the Oxfordshire Code of Conduct and that it be endorsed for adoption by Town and Parish Councils in the district.

Nature and Composition of Elected Member Body

The Committee was reminded that at their March meeting Members had indicated support for a free standing Standards Committee rather than the previously supported view that the role be subsumed by the Accounts, Audit and Risk Committee. The Committee noted that the draft Terms of Reference submitted by the Head of Law and Governance could apply to either a free standing committee or be added to the remit of the Accounts, Audit and Risk Committee.

In considering the nature and composition of the elected member body, the Committee reaffirmed their preference for a free standing Standards Committee comprising 8 members. The previously held view to transfer responsibilities to the Accounts, Audit and Risk Committee had been reached when it was anticipated a Code of Conduct would not be mandatory. However as this was now mandatory under the Localism Act 2011, the Committee agreed that it was appropriate to have a separate Committee to demonstrate independence. Additionally, as the district council retained responsibility for town and parish councils, members agreed that the Committee should have the power to co-opt as it felt appropriate. Members noted that the Committee

would be a Local Government Act 1972 Committee and therefore subject to political balance rules.

The Committee agreed that Council should be recommended to establish a free standing Standards Committee comprising 8 members, with the power to co-opt and the proposed terms of reference to replace the current Standards Committee.

Independent Persons

The Head of Law and Governance reminded the Committee that the Localism Act 2011 required that at least one independent person be appointed by full Council as part of the new arrangements. The independent person would not be a member of the new Standards Committee but could be invited to attend meetings.

The Committee had agreed at their March meeting that it would be appropriate to appoint two independent persons to avoid potential conflicts of interest and provide resilience.

In response to Members' questions, the Head of Law and Governance confirmed that it was anticipated that a transitional provision would be enacted whereby current independent members of Standards Committees would be able to apply to be independent persons if they resign before 30 June 2012. Independent Members would be advised accordingly if the provision was enacted.

The Committee endorsed the approach presented by the Head of Law and Governance and agreed Council should be recommended to appoint two independent persons at a future date based on the recommendation of a panel comprising two members of the new elected members body and the Head of Law and Governance. Additionally, authority should be delegated to the Head of Law and Governance in consultation with the Head of Finance and Procurement to fix an initial allowance for the independent persons. The Committee also agreed that it would be useful to provide Council with a summary of the role of the Independent Persons.

Register of Interests

The Head of Law and Governance advised the Committee that as the Regulations dealing with disclosable pecuniary interests ("DPs") had not yet been enacted it was not possible for any further consideration to be given to the form and content of the future Register of Interests prior to the 16 May 2012 meeting of Council. The Committee was therefore requested to recommend delegated authority to the Monitoring Officer to take the appropriate steps to establish the register and advise district, town and parish councillors accordingly.

The Committee stressed the importance of ensuring all councillors were aware of the new requirements and agreed to recommend to Council that authority be delegated to the Head of Law and Governance / Monitoring Officer to take the necessary steps to establish a register of interests and the required arrangements pending formal consideration by the elected member body in due course.

Resolved

- (1) That Council be recommended to adopt the Oxfordshire Code of Conduct (set out in the annex to these minutes as set out in the minute book) with effect from 1 July 2012 or such other date as is legislatively required ("the effective date") and that it be endorsed for adoption by the Town and Parish Councils in Cherwell District.
- (2) That Council be recommended to agree to establish a free standing Standards Committee comprising eight elected members, with the power to co-opt members as it sees fit, for the purpose of hearing and determining complaints of Councillor misconduct with the terms of reference set out at the annex to these minutes (as set out in the minute book) from the effective date to replace the current Standards Committee.
- (3) That Council be recommended to agree that two independent persons be appointed by Council at a future date on the recommendation of a panel comprising two members of the new Committee plus the Head of Law and Governance and to delegate authority to fix an initial allowance payment for such persons to the Head of Law and Governance in consultation with the Head of Finance and Procurement.
- (4) That Council be recommended to agree to delegate authority to the Head of Law and Governance/Monitoring Officer to take the necessary steps to establish a register of interests for District, Town and Parish Councillors and the required arrangements (including a complaints procedure and a hearing procedure) pending formal consideration by the new Committee in due course.

The meeting ended at 7.05 pm

Chairman:

Date:

Standards Committee

Co-Option of Town/Parish Council Members

10 October 2012

Report of Head of Law and Governance / Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to consider whether it wishes to go through a process of co-opting Town/Parish Council members to the Committee.

This report is public.

Recommendations

The Standards Committee is recommended to:

- (1) Consider whether it wishes to co-opt Town/Parish Council members to the Committee and, if so, how many.
- (2) If Town/Parish Council members are to be co-opted, determine a process for the receipt and consideration of applications.

Executive Summary

- 1.1 Under the Localism Act 2011 it is no longer mandatory or possible to appoint Town/Parish Councillors to be full members of the Committee. However, the Committee does retain discretion to appoint co-opted members on a non-voting basis under the Local Government Act 1972. On 16th May 2012 full Council agreed that Town/Parish Council members could be co-opted to the Committee at the Committee's discretion.

Background Information

- 2.1 Under the previous Standards regime it was legally necessary to appoint Town/Parish Councillors to be full members of the former Standards Committee with voting rights.
- 2.2 The new regime under the Localism Act 2011 removes this provision and it is no longer legally necessary or possible for Town/Parish Councillors to be full

members of the Committee. However, the Committee could decide in its discretion to co-opt Town/Parish Councillors onto the Committee on a non-voting basis. At the full Council on 16th May 2012 it was resolved that the question of whether or not to exercise this discretion should be left to the new Standards Committee.

- 2.3 The Committee is, therefore, requested to consider whether it wishes to co-opt non-voting members from the Town and Parish Councils in the Cherwell District. In the event that the Committee does wish to consider co-option of such members, it is further requested to consider how many members it wishes to co-opt, and the appointment process to be followed. It is suggested that an appropriate procedure would be the sending of letters by the Head of Law and Governance/Monitoring Officer to all of the Town and Parish Council Clerks in the District seeking expressions of interest from individual Councillors. These could then be considered by a panel of the Standards Committee and the Head of Law and Governance/Monitoring Officer. Names would then be put forward for consideration for co-option. This would largely mirror the process recently followed for the appointment of Independent Persons.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 Given the fact that the Committee will, from time to time, be considering alleged misconduct by Town and Parish Councillors it may be considered appropriate to co-opt a number of Town/Parish Councillors to be non-voting members of the Committee.
- 3.2 The options available to the Committee are:

Option One To agree to co-opt Town and Parish Councillors to be non-voting members of the Committee.

Option Two To retain the current Committee membership and not to co-opt any non-voting members.

Consultations

None

Implications

Financial: Should Town/Parish Councillors be co-opted onto the Committee they would be entitled to receive an allowance pursuant to the Members Allowances Scheme.

Comments checked by Karen Curtin, Head of Finance and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk

Legal: The legal implications are dealt with in the report.

Comments checked by Kevin Lane, Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Management:

The presence of co-opted Town/Parish Councillors may mitigate the risk of the Committee taking erroneous decision in the context of a Town or Parish Councillor complaint.

Comments checked by Gavin Halligan-Davies, Interim Corporate Performance Manager, gavin.halligan-davies@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Kevin Lane, Head of Law and Governance
Contact Information	0300 0030107 Kevin.lane@cherwellandsouthnorthants.gov.uk

This page is intentionally left blank

Standards Committee

Appointment of Independent Persons - Update

10 October 2012

Report of Head of Law and Governance / Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to receive a verbal update on the latest position with regard to the appointment of Statutory Independent Persons so that recommendations can be made to the full Council meeting on 15 October 2012.

This report is public.

Recommendations

The Standards Committee is recommended to:

- (1) Receive a verbal update from the Head of Law and Governance/Monitoring Officer on the latest position with reference to the appointment of Independent Persons and agree recommended appointments to full Council.

Executive Summary

- 1.1 The Council is statutorily required to appoint at least one Independent Person as part of the new Standards Regime introduced by the Localism Act 2011. This report updates the Committee on the latest position with regard to the appointment process so that an appropriate recommendation can be made at the next full Council meeting on 15 October 2012.

Background Information

- 2.1 On 16 May 2012 full Council resolved that two Independent Persons be appointed by the Council at a future date on the recommendation of a panel comprising two members of the new Standards Committee, plus the Head of Law and Governance/Monitoring Officer, and that authority to set the initial allowance payment of such Independent Persons be delegated to the Head of Law and Governance/Monitoring Officer in consultation with the Head of Finance and Procurement. In relation to the latter it has been agreed to pay

the same allowance rate as applied to external independent members of the former Standards Committee.

- 2.2 At the time of writing this report the panel, comprising Councillors Fred Blackwell and Rosie Stratford, had yet to meet and, therefore, it is not possible to provide details of the panel recommendations for appointment in this report. The Head of Law and Governance/Monitoring Officer will provide a verbal update on the panel's recommendations for appointment at the meeting.
- 2.3 The views of an Independent Person must be sought and taken into account by the Council before it makes a decision on an allegation that it has decided to investigate. The views of an Independent Person may also be sought by the Authority in relation to an allegation in circumstances other than as set out above, by a Member or co-opted Member of the Authority if that person's behaviour is the subject of a complaint, and by a Member or a co-opted Member of a Parish Council if that person's behaviour is the subject of a complaint.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The Council is statutory obliged to appoint at least one Independent Person and, pursuant to the full Council resolution dated 16 May 2012, the Committee is requested to recommend two of the applicants for appointment as Independent Persons to the next meeting of full Council on 15 October 2012.
- 3.2 The options available to the Committee are:

Option One To accept the recommendations of the panel.

Option Two To reject the recommendations of the panel and to recommend alternative applicants to the Council for appointment.

Consultations

None

Implications

Financial: Pursuant to the delegated authority referred to above it has been agreed that the Independent Persons should receive an allowance equivalent to that received by the former Independent Members of the old Standards Committee. This equates to approximately £700 per annum and can be funded from existing budgets in Democratic Services.

Comments checked by Karen Curtin, Head of Finance

and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk

Legal:

The legal implications are dealt with in the report.

Comments checked by Kevin Lane, Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Management:

The Council will be failing to comply with its legal obligations should it not appoint at least one Independent Person.

Comments checked by Gavin Halligan-Davies, Interim Corporate Performance Manager. Gavin.halligan-davies@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
None	
Background Papers	
Independent Persons application forms - EXEMPT	
Report Author	Kevin Lane, Head of Law and Governance
Contact Information	0300 003 0107 Kevin.lane@cherwellandsouthnorthants.gov.uk

This page is intentionally left blank

Standards Committee

Arrangements for Dealing with Complaints of Councillor Misconduct

10 October 2012

Report of Head of Law and Governance / Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to endorse, or amend as it sees fit, the arrangements for dealing with complaints of Councillor misconduct introduced with effect from 1 July 2012 by the Head of Law and Governance/Monitoring Officer under the delegated authority given by full Council in May 2012.

This report is public.

Recommendations

The Standards Committee is recommended to:

- (1) Endorse the arrangements for complaints of Councillor misconduct at Appendix 1, or to amend them as it sees fit.

Executive Summary

Introduction

- 1.1 On 16 May 2012 (Minute 14 refers) full Council resolved to delegate authority to the Head of Law and Governance/Monitoring Officer to take the necessary steps to establish the required arrangements (including a Complaints Procedure and a Hearing Procedure) for dealing with complaints of Councillor misconduct pending formal consideration by this Committee in due course. This report seeks the approval of this Committee pursuant to that full Council resolution.

Background Information

- 2.1 Further to the delegated authority given to the Head of Law and Governance/Monitoring Officer by full Council on 16 May 2012 the arrangements for dealing with complaints of councillor misconduct at Appendix 1 were introduced. In addition, a formal complaints form was

created so as to ensure that all complaints were put forward in a consistent way and contained the necessary information required to enable the complaint to be fully understood.

- 2.2 The Committee is requested to consider the appended documents and formally to ensure them for continuing use with future complaints of Councillor misconduct.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The Council is legally required to introduce arrangements for dealing with complaints of Councillor misconduct and the Committee accordingly needs to endorse the appended documentation, or amend as it sees fit.

- 3.2 The relevant options for the committee are:

Option One To accept the recommendation and to endorse the documentation at Appendix 1 and Appendix 2.

Option Two To amend the documentation at Appendix 1 and/or Appendix 2 as the Committee sees fit.

Consultations

None

Implications

Financial: There are no direct financial implications arising from this report. However, having a consistent approach to dealing with complaints of Member misconduct ensures that any complaints received are dealt with in an efficient and cost effective way.

Comments checked by Karen Curtin, Head of Finance and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk

Legal: The relevant legal implications are dealt with in the report.

Comments checked by Kevin Lane, Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Management: There is a risk of non-compliance with the Council's legal obligations if complaints are dealt with in an inconsistent way. The adoption of a consistent set of arrangements mitigates this risk.

Comments checked by Gavin Halligan-Davies, Interim Corporate Performance Manager, gavin.halligan-davies@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
Appendix 1	Arrangements for Dealing with Complaints of Councillor Misconduct
Appendix 2	Standards Complaint Form
Report Author	Kevin Lane, Head of Law and Governance
Contact Information	0300 0030107 Kevin.lane@cherwellandsouthnorthants.gov.uk

This page is intentionally left blank

Arrangements for dealing with complaints of Councillor Misconduct

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority *[or of a parish council within its area]* has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority *[or of a parish council within the authority’s area]*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member *[or a member or co-opted member of a parish council]* against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Council’s Offices.

[Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council or request the parish clerk to allow you to inspect the parish council’s Code of Conduct.]

3 Making a complaint

If you wish to make a complaint, please write or email to:-

Head of Law and Governance / Monitoring Officer
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxon
OX15 4AA

Or

kevin.lane@cherwellandsouthnorthants.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please clearly identify the Councillor or Councillors you are complaining about and the paragraph(s) of the Code which you allege have been breached.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, will take a decision as to whether it merits formal investigation. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. *[Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.]*

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and after consulting with the Independent Person, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned [*and to the Parish Council, where your complaint relates to a Parish Councillor*], notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for hearing before the Standards Committee or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *[and the Parish Council]* for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a hearing.

7.2 Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Standards Committee which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Monitoring Officer may conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chairman of the Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Committee concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Committee will then consider what action, if any, it should take as a result of the member's

failure to comply with the Code of Conduct. In doing this, the Committee will give the member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Standards Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee may –

- 8.1 Censure or reprimand the member;
- 8.2 Publish its findings in respect of the member's conduct;
- 8.3 Report its findings to the Council [*or to the parish Council*] for information;
- 8.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.6 Recommend to Council that the member be replaced as Leader;
- 8.7 Instruct the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the member;
- 8.8 Recommend to Council or the Council Leader [*or recommend to the Parish Council*] that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
- 8.9 Withdraw [*or recommend to the Parish Council that it withdraws*] facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 8.10 Exclude [*or recommend that the Parish Council exclude*] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive, Committee and Sub-Committee meetings.

The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Committee Chairman, and send a copy to you, to the member *[and to the Parish Council]*, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Committee?

The Standards Committee comprises five Councillors of the District Council appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council. It may also co-opt non-voting representatives from Town and Parish Councils.

The Independent Person is invited to attend all meetings of the Committee and his views are sought and taken into consideration before it takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is then appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;

11.2 *[Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area],*
or

11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means -

11.3.1 Spouse or civil partner;

- 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 11.3.3 Grandparent of the other person;
- 11.3.4 A lineal descendent of a grandparent of the other person;
- 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
- 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
- 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

1 July 2012

CHERWELL DISTRICT COUNCIL CODE OF MEMBERS' CONDUCT

1. This code of conduct is adopted pursuant to the council's duty to promote and maintain high standards of conduct by members and co-opted members¹ of the council.
2. This code applies to you as a member or co-opted member of this council when you act in that role and it is your responsibility to comply with the provisions of this code.

Selflessness

3. You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

Objectivity

4. In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

5. You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

Openness

6. You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

Honesty and integrity

7. You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

¹ A "co-opted member" for the purpose of this code is, as defined in the Localism Act section 27 (4) "a person who is not a member of the council but who
a) is a member of any committee or sub-committee of the council, or
b) is a member of, and represents the council on, any joint committee or joint sub-committee of the council;
and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub committee".

Leadership

8. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

General Obligations

9. You must treat others with respect and ensure that you are aware of and comply with all legal obligations that apply to you as a member or co-opted member of the council and act within the law;
10. You must not bully any person.
11. You must not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the council.
12. You must not disclose information given to you in confidence by anyone, or information acquired by you of which you are aware, or ought reasonably to be aware, is of a confidential nature except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person, or
 - (iv) the disclosure is:
 - a) reasonable and in the public interest;
 - b) made in good faith and in compliance with the reasonable requirements of the council.
13. You must not improperly use knowledge gained solely as a result of your role as a member for your own personal advantage.
14. When making decisions on behalf of or as part of the council you must have regard to any professional advice provided to you by the council's officers.
15. When using or authorising the use by others of the resources of the council:
 - (i) you must act in accordance with the council's reasonable requirements;
 - (ii) you must make sure that you do not use resources improperly for political purposes and do not use them at all for party political purposes.

REGISTERING AND DECLARING INTERESTS

16. You must, within 28 days of taking office as a member or co-opted member, notify the council's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil

partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

17. You must disclose the interest at any meeting of the council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'².
18. Following any disclosure of an interest not on the council's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
19. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.

² A "sensitive interest" is described in the Localism Act 2011 as a member or co-opted member of a council having an interest, and the nature of the interest being such that the member or co-opted member, and the council's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

COMPLAINT OF COUNCILLOR MISCONDUCT

If you have any questions or difficulties filling in this form or you are in need of any support in completing it, because for example English is not your first language, or you have a disability that prevents you making your complaint in writing - please contact us on 0300 003 0107 and ask for the Monitoring Officer.

You can also e-mail us at kevin.lane@cherwellandsouthnorthants.gov.uk please state that the email is for the Monitoring Officer.

Please write CLEARLY and in BLACK INK

As an alternative to printing this form and writing the information, you can complete our online complaints form or email us at the above address to request an MS Word version of this form.

Please note

- Complaints can only be accepted in writing
- An officer from the Council may contact you personally to go through the details of your complaint
- The Council is unlikely to be able to keep your identity or the information you have provided confidential. If you have serious concerns about disclosure of your name and the details of your complaint, please complete Section Five on confidential information
- Please read the document Arrangements for dealing with complaints of Councillor misconduct prior to completing this form.

Section One - Your details

Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address: *	

* Please note that, wherever possible, we will contact you via email, if you have provided an email address

Please tick the appropriate box to tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of a Council
(if applicable, please state which Council)
- Local authority monitoring officer
- Other council officer or authority employee
- Other (Please specify): _____

Section Two: Who are you complaining about

Please give the name of the councillor(s), or co-opted member(s) that you think may be in breach of the Code of Conduct AND tell us which Council they are members of.

Name of individual/s (include both first and last names)

	First Name	Last Name	Name of Council
1.			
2.			
3.			
4.			
5.			

Section Three: What are you complaining about?

Please provide us with as much information as you can about your complaint to help us decide what action to take. Include the date and details of the alleged misconduct, and any information that supports the allegation. It is important that you provide all the information you wish to have taken into account when a decision is made as to the action to be taken. If you are complaining about more than one member you should clearly explain what each individual member has done that you believe has breached the Code of Conduct.

We can only investigate complaints where it appears a councillor may have breached the Code of Conduct for Members (please see document Arrangements for dealing with complaints of Councillor misconduct). You can continue on a separate sheet if there is not enough space on this form.

You should provide any relevant background information

--

Evidence (if this applies)

Please attach to this form, copies of any correspondence, documents, or other evidence that you feel is relevant to your complaint. Please avoid sending us large amounts of background information that only relate indirectly to your complaint.

Please briefly describe the documents you are enclosing:

1.	
2.	
3.	

Tick this box if you would like us to return the evidence to you.

Witnesses (if this applies)

Please tell us the names and details of any witnesses:

	First Name	Last Name	Address/Phone Number
--	------------	-----------	----------------------

	First Name	Last Name	Address/Phone Number
1.			
2.			
3.			

Section Four: Resolution of your complaint

As explained in the document Arrangements for dealing with complaints of Councillor misconduct in appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. For example, this may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority, or some form of mediation. Where the member or the authority makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

Please use the box below to tell us whether you feel that there may be a way to resolve your complaint without the need for a formal investigation and, if so, how.

Section Five: Confidential information (this part only applies if you are asking for your identity to be kept confidential)

In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe that they have a right to be provided with a summary of the complaint. As explained in the document Arrangements for dealing with complaints of Councillor misconduct we will not withhold your identity or the details of your complaint unless there is very good reason.

Accordingly, please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. However, if you have made such a request you will be contacted and advised of the decision and, if your request is not granted, we will allow you the option of requesting the withdrawal of your complaint.

Please provide details of why you believe we should withhold your name and/or the details of your complaint below:

Please consider the complaint I have described above and the evidence attached. I understand and accept that the details will normally be disclosed to the Councillor and any parties involved in the complaints procedure. It may also be shared with the police in the prevention or detection of crime.

Signature

e: _____

Date: _____

Please send this form together with any attachments to:-

Head of Law and Governance / Monitoring Officer

Cherwell District Council

Bodicote House

Bodicote

Banbury

Oxon

OX15 4AA

Or by e-mail to kevin.lane@cherwellandsouthnorthants.gov.uk marked for the attention of the Monitoring Officer

This page is intentionally left blank

Standards Committee

Determination of Requests for Dispensation

10 October 2012

Report of Head of Law and Governance / Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to agree a method for dealing with applications for dispensation which are received from members of Cherwell District Council.

This report is public.

Recommendations

The Standards Committee is recommended to:

- (1) Delegate authority to the Head of Law and Governance/Monitoring Officer in consultation with an Independent Person to determine requests for dispensation that are received from members of Cherwell District Council.

Executive Summary

- 1.1 Section 33 of the Localism Act 2011 enables Councillors to apply for a dispensation to enable them to participate in the debate and/or vote on matters in which they have disclosable pecuniary interests. It is necessary to agree an appropriate method for dealing with such requests.

Background Information

- 2.1 Under the provisions of the Localism Act 2011, as incorporated in the Council's adopted Code of Conduct, a Councillor with a disclosable pecuniary interest must refrain from participation in the discussion and vote on any matter to which the interest applies. It is, however, possible for a Councillor to seek a dispensation from either or both of these restrictions on certain grounds. Dispensation applications from Cherwell District Council Councillors are determined by this Committee while applications from Town and Parish Councillors are determined by the relevant Town and Parish Council concerned.

- 2.2 The grounds for dispensation are as follows:
- 2.2.1 Where, without the dispensation, the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.
 - 2.2.2 Where, without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
 - 2.2.3 Where the granting of the dispensation is in the interests of persons living in the Authority's area.
 - 2.2.4 Where, without the dispensation, each member of the Authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive.
 - 2.2.5 Where it is otherwise appropriate to grant a dispensation.
- 2.3 While the grounds for dispensation in paragraphs 2.2.1, 2.2.2, and 2.2.4 above largely represent previous provisions, the much broader and subjective grounds contained with paragraphs 2.2.3 and 2.2.5 are new.
- 2.4 While it is not yet clear how many dispensation applications might be submitted by Cherwell District Council Councillors it is clear that the adoption of a procedure whereby the Committee needs to determine every dispensation application would be impracticable given the likely frequency with which the Committee will be meeting, and the speed with which some dispensation requests may need to be considered. Accordingly it is proposed that the Committee delegates authority to the Head of Law and Governance/Monitoring Officer to determine dispensation applications in consultation with one of the Independent Persons. In the event that the Head of Law and Governance/Monitoring Officer considers it appropriate to refer a dispensation application to the Committee for consideration this could be done. This is most likely to arise with certain dispensation applications that might be submitted pursuant to paragraphs 2.2.3 and/or 2.2.5 above.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 It is necessary for the Committee to agree to introduce an appropriate procedure for dealing with requests for dispensation. It is suggested that the majority of dispensation requests can be dealt with satisfactorily under delegated authority by the Head of Law and Governance/Monitoring Officer in consultation with one of the Independent Persons. However, any applications raising difficult or subjective issues would be brought to Committee for determination.

3.2 The options available to the Committee are:-

- Option One** to approve the recommendation.
- Option Two** to delegate authority only in respect of applications for dispensation on certain grounds
- Option Three** to reject the recommendation and reserve all applications for dispensation for determination by the Committee

Consultations

None

Implications

- Financial:** There are no financial implications arising from this report.
Comments checked by Karen Curtin, Head of Finance and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk
- Legal:** The relevant legal implications are dealt with in the report.
Comments checked by Kevin Lane, Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk
- Risk Management:** There are no risk management implications arising from this report.
Comments checked by Gavin Halligan-Davies, Interim Corporate Performance Manager, gavin.halligan-davies@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
None	
Background Papers	
None	
Report Author	Kevin Lane, Head of Law and Governance
Contact Information	0300 0030107 Kevin.lane@cherwellandsouthnorthants.gov.uk

This page is intentionally left blank

By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank