

Council

Ratification of Standards Arrangements

16 July 2012

Report of Head of Law and Governance

PURPOSE OF REPORT

To enable Council to ensure compliance with the Localism Act 2011 by ratifying the code of conduct previously adopted at the May 2012 Council meeting. Also to take the opportunity to confirm the arrangements for the handling of complaints alleging misconduct by District, Town and Parish Councillors that have been prepared by the Head of Law and Governance pursuant to delegated authority previously granted.

This report is public

Recommendations

Council is recommended to:

- (1) Approve the arrangements for dealing with complaints of Councillor misconduct appended to this report.
- (2) Ratify the adoption of the code of conduct at appendix 1 to the arrangements previously resolved at the May 2012 Council meeting.
- (3) Note the intention of the Head of Law and Governance to bring a report to the October meeting of Council to seek approval to the appointment of two independent persons to the Standards Committee and possible revisions to the adopted code of conduct.

Details

- 1.1 At its May meeting Council resolved to adopt a new code of conduct as required by the Localism Act 2011 to replace the previous mandatory code with effect from the effective date which was anticipated to be 1 July 2012. It also resolved to replace the previous Standards Committee with a new Committee comprising 5 elected members, to appoint two independent persons at a future meeting and to delegate authority to the Head of Law and Governance to prepare and introduce the necessary arrangements for the handling of complaints of Councillor misconduct.

- 1.2 Although it was considered prudent to adopt a new code at the May meeting, and indeed this was a course of action followed by all other principal authorities in Oxfordshire and a substantial number across the country, it became apparent when the statutory commencement order confirming the 1 July effective date was made on 8 June 2012 that it would unexpectedly be necessary for the Council to ratify its previous resolution to adopt the new code of conduct at its first available future meeting. Failure to do so would risk non-compliance with the statutory duty imposed on the Council by the 2011 Act and potentially make the new code of conduct unenforceable. Accordingly the principal purpose of this report is to seek the necessary ratification of the previous adoption resolution in order to ensure legal compliance by the Council.
- 1.3 The opportunity is also taken to bring before Members the detailed arrangements appended for the handling of complaints of Councillor misconduct that have been put into place by the Head of Law and Governance under the delegated authority previously given to him. The arrangements are based on a model document that is also being used by a substantial number of other Councils and, in particular, they seek to ensure that only the most serious complaints lead to the need for a formal Committee hearing. Council's approval to the arrangements is sought. The code of conduct previously adopted and which Council is requested to ratify is at appendix 1 of the arrangements.
- 1.4 No progress has yet been made with appointing the independent persons largely because of uncertainty until recently of the ability of the former independent members of the Standards Committee to apply for the role. It has recently been confirmed that they can but, in a letter to Council Leaders dated 28 June 2012 the Parliamentary Under Secretary of State has indicated that the Government proposes to legislate to limit their term of office, if appointed, until 1 July 2013 following which they would be unable to be appointed for a minimum of 5 years. The appointment process will shortly commence and it is intended to bring recommended appointments to the October meeting of Council.
- 1.5 It is also anticipated that it will be necessary to revise the adopted code of conduct now that the detail of Disclosable Pecuniary Interests is known. Consideration is to be given by the monitoring officers throughout Oxfordshire to the possible need to augment the code with further provisions e.g. categories of non-disclosable pecuniary interests/non pecuniary interests, provision for the notification of gifts and hospitality. Again the intention with any revised code would be to seek its adoption as a common form throughout the County at all three tiers of local authority. In this regard the Head of Law and Governance is not aware of any Town or Parish Councils in the Cherwell district who have adopted a code that is different to the one adopted by this Council.

Conclusion

1.6 Council is recommended to ratify its previous resolution to adopt the code of conduct contained in the appended arrangements, to approve the arrangements themselves and to note the intention to report back as necessary to the October meeting.

Key Issues for Consideration/Reasons for Decision and Options

2.1 The following options have been identified. The approach in the recommendations is believed to be the best way forward.

- Option One** To accept the recommendations.
- Option Two** Not to ratify the previous resolution to adopt the code of conduct. This is not recommended as it would risk non compliance with the legislative requirements.
- Option Three** To amend the arrangements. This is not recommended as they follow a model that is being implemented by a large number of other Councils and they are considered to strike the right balance between the need to have a formal procedure to ensure consistency and fairness to Councillors and complainants while at the same avoiding an overly formalistic process.

Consultations

- Financial** There are no immediate financial implications at this stage. It is not envisaged at this stage that any allowance payments for independent persons will exceed the amounts currently paid to external members of the existing Committee.
Comments checked by Karen Curtin Head of Finance and Procurement
- Legal** These are dealt with in the report.
Comments checked by Kevin Lane Head of Law and Governance
- Risk Management** Without effective standards arrangements in place there is a risk to the council's reputation and the preferred recommendation outlined in the report mitigates reputational and legal risks.
Comments checked by Karen Curtin Head of Finance and Procurement

Document Information

Appendix No	Title
1	Arrangements for the handling of complaints of Councillor misconduct – 1 July 2012
Background Papers	
None	
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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.
 - (a) Selflessness
 3. You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.
 - (b) 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.
 - (c) 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.
 - (d) 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.
 - (e)
 - (f) 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.
 - (g) 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.
- (2) 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;

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".

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

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.

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.