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Standards Committee Agenda

Wednesday, 21 March 2018 at 4.30 pm

Council Chamber, Muriel Matters House, Breeds Place, Hastings, TN34 3UY.
Please enter the building via the Tourist Information Centre entrance.

For further information, please contact Emily Horne on 01424 451719 or email:
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Agenda Item 3 Public Document Pack

STANDARDS COMMITTEE

29 JUNE 2017

Present: Councillors Roberts (Chair), Sinden (Vice-Chair), Bacon, Clarke and B Dowling

Independent persons: Jan Gray and Susan Fellows
Independent Inspector: Victoria Simpson, Orbis Public Law
Christine Barkshire-Jones Monitoring Officer, Kirsty Cameron Deputy Monitoring Officer

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Cooke and Chowney.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made at this meeting.

3. MINUTES OF THE MEETING HELD ON 8 DECEMBER 2016

RESOLVED - (unanimously) that the minutes of the Assessment Sub-Committee meeting held on 8 December 2016 be approved.

4. COMPLAINT - SB/06/02/2016

The Monitoring Officer submitted a report in respect of a complaint alleging several breaches of the Code of Conduct by Councillor Kim Forward. Councillor Cooke had given his apologies for this meeting and Councillor Forward was present.

On 14th November 2016 the Monitoring Officer received a complaint from Councillor Robert Cooke concerning Councillor Kim Forward.

Councillor Cooke's complaint stated that Councillor Forward had failed to declare a prejudicial interest at the Full Council meeting on 26th October 2016 regarding her involvement in the Council's Social Lettings Agency Scheme and during consideration of the report of the Housing Strategy which was approved by Full Council on 20th July 2016.

At the initial assessment meeting held on 8th December 2016, the Committee agreed that the complaint met the initial tests set out in the Monitoring Officer's report. The committee believed the evidence was sufficient to warrant appointing an external investigator.

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Victoria Simpson of Orbis Public Law was appointed by the Monitoring Officer to conduct the investigation into the complaint against Councillor Forward. The decision was taken to conduct the investigation after the local election on 4th May 2017 and the general election on 8th June 2017 due to the nature of the complaint, so as not to take place during Purdah. The report of the external investigator confirmed that a 'technical' breach of the Code had taken place. The Monitoring Officer arranged a hearing to allow the Standards Committee to decide if they agreed with the findings of the report and determine any action to take if appropriate. The hearing would allow both Councillors Cooke and Forward, to make their own submissions.

Victoria Simpson's report was appended to the Monitoring Officer's report as Appendix B. The report was restricted as it contained exempt information by virtue of Paragraph 1.2 of Schedule 12A to the Local Government Act 1972 because some of the interviews were undertaken on a confidential basis and contained sensitive information.

The Monitoring Officer outlined the procedure for the meeting. She said it had taken some time to deal with the complaint as the matter was passed on to an external investigator and needed to take place after the elections so as not to take place during Purdah.

Victoria Simpson outlined the steps she had taken during her investigation. She thanked Councillor Forward for her co-operation during the investigation and referred to her findings set out in her report. It was her view that there has been a technical breach of the Code of Conduct in respect of paragraph 13(2) of the Code as a result of the Councillor Forward's failure to update her entry on her register of interests within 28 days of a change. It was also her view that there was no breach of the Code of Conduct in respect of paragraphs 9(1) and 12(1) of the Code of Conduct.

Members thanked Victoria Simpson for her comprehensive report.

Jan Gray and Susan Fellows, Independent Persons, both agreed that a technical breach of Paragraph 13(2) of the Code of Conduct had taken place.

The Committee retired to consider findings of fact and which sections of the Code of Conduct had been breached (if any). They returned to announce their findings of fact, as follows:-

Decision:-

Having read the report and heard from all parties including Councillor Kim Forward, Victoria Simpson and the views of the Independent Persons, the facts are not disputed.

Resolved unanimously (Councillor Dowling proposed and Councillor Clarke seconded) that there was a technical breach of Paragraph 13(2) of the Code. Paragraph 13 (2) Subject to paragraph 14, you must within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (10)(i) or (1)(ii), register details of

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that new personal interest or change by providing written notification to your authority's monitoring officer.

There was no breach of the Code of Conduct in respect of paragraphs 9(1) and 12(1).

Reasons for the decision:-

1. Members considered the witness statements of Councillor Cooke and Councillor Forward, the Independent Persons and the external investigators report.
2. At the time of the event complained of Councillor Forward was an elected member of Hastings Borough Council and was required to observe the Code of Conduct of Hastings Borough Council.
3. Councillor Forward was at the Full Council meeting on 26th October as a Councillor and therefore was in office as the time of the alleged conduct and the Code of Conduct was in force at that time.
4. Councillor Forward admitted that she did fail to update her register within the required 28 day period following a change in her interests. This was an omission as opposed to a deliberate act and once it was brought to her attention Councillor Forward rectified the situation.

Victoria Simpson addressed the Committee on the issue of sanctions. She advised that the sanctions need to be proportionate and relevant to the breach of the Code of Conduct. She added that in addition to the sanctions listed in her report, members could decide to impose a sanction of no further action as the breach was a technical breach and has been remedied.

Councillor Forward said she was sorry for the technical breach of the Code of Conduct and will ensure she would update her member's interest form on a regular basis.

Jan Gray and Susan Fellows, Independent Persons, both agreed that as Councillor Forward had apologised and rectified the breach that no further action should be taken.

The Committee retired to consider what sanctions, if any, to apply. They returned and announced the sanctions as follows:-

RESOLVED (unanimously) Councillor Sinden proposed and Councillor Bacon seconded):- No further action

Reasons for the sanction imposed:-

The Committee agreed that in light of the fact that Councillor Forward had apologised for the technical breach and rectified the error as soon as it was brought to her attention to take no further action was an appropriate and proportionate sanction for this technical breach of the Code of Conduct. The Committee asked that all members be reminded to check their register of interests on a regular basis.

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5. COMPLAINT - SB/06/03/2016

The Monitoring Officer submitted a report to decide what action to take in respect of a complaint alleging several breaches of the Code of Conduct by Councillor Rob Lee.

Councillor Chowney had given his apologies for this meeting and Councillor Lee was present.

On 16th November 2016 the Monitoring Officer received a complaint from Councillor Peter Chowney concerning Councillor Rob Lee.

Councillor Chowney's complaint stated that at the Full Council meeting on 26th October 2016, Councillor Lee's behaviour and comments towards Councillor Kim Forward breached the Code of Conduct. The complaint alleged that Councillor Lee accused Councillor Forward of failing to declare a personal interest in the report on the housing strategy that was approved by Full Council. He accused her of financial gain through participating in the Council's Social Lettings agency Scheme and of not declaring an interest in that scheme. In doing so Councillor Chowney alleged that Councillor Lee was in breach of the second principle of the Code, in that his integrity could be questioned as a result of his untrue allegations about Councillor Forward, that he behaved improperly and that he failed to avoid the appearance of such behavior. The complaint alleges that in making false allegations about Councillor Forward, Councillor Lee breached the sixth principle of the Code, in that he placed himself in a situation where his honesty may be questioned, he behaved dishonestly, and he failed to avoid the appearance of such behavior. The complaint also alleges that in the tone and content of his verbal attack on Councillor Forward, Councillor Lee breached article 3(02)(b) of the Code, regarding a requirement not to bully any person.

At the initial assessment meeting held on 8th December 2016, the Committee agreed that the complaint met the initial tests set out in the Monitoring Officer's report. The Committee believed the evidence was sufficient to warrant appointing an external investigator.

Victoria Simpson of Orbis Public Law was appointed by the Monitoring Officer to conduct the investigation into the complaint against Councillor Lee. The decision was taken to conduct the investigation after the local election on 4th May 2017 and the general election on 8th June 2017 due to the nature of the complaint, so as not to take place during Purdah. The report of the external investigator confirmed that a breach of the Code had taken place. The Monitoring Officer arranged a hearing to allow the Standards Committee to decide if they agreed with the findings of the report and determine any action to take if appropriate. The hearing would allow both Councillors Chowney Lee, to make their own submissions.

Victoria Simpson's report was appended to the Monitoring Officers report as Appendix B. The report was restricted as it contained exempt information by virtue of Paragraph 1.2 of Schedule 12A to the Local Government Act 1972 because some of the interviews were undertaken on a confidential basis and contained sensitive information.

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The Monitoring Officer outlined the procedure for the meeting. She said it had taken some time to deal with the complaint as the matter was passed on to an external investigator and needed to take place after the election so as not to take place during Purdah.

Victoria Simpson outlined the steps she had taken during her investigation. She referred to her findings set out in her report. It was her view that there had been a breach of the Code of Conduct in respect of paragraph 3(1) of the Code in that Councillor Lee failed to treat Councillor Forward with respect. It was also her view that there was no breach of the Code of Conduct in respect of paragraph 3(2)b of the Code of Conduct.

Members thanked Victoria Simpson for her comprehensive report.

Councillor Lee accepted that he treated Councillor Forward with a lack of respect. He said he was very sorry about that and will make a full apology to her.

Jan Gray and Susan Fellows, Independent Persons, both agreed that a breach of paragraph 3(1) of the Code of Conduct had taken place.

The Committee retired to consider findings of fact and which sections of the Code of Conduct had been breached (if any). They returned to announce their findings of fact, as follows:-

Decision:-

Having read the report and heard from all parties including Councillor Rob Lee, Victoria Simpson and the views of the Independent Persons, the facts are not disputed.

Resolved unanimously (Councillor Dowling proposed and Councillor Clarke seconded) that there was a breach of Paragraph 3(1) of the Code of Conduct. Members must treat others with respect.

There was no breach of the Code of Conduct in respect of paragraph 3(2)b of the Code of Conduct. Members must not bully any person.

Reasons for the decision:-

1. Members considered the witness and oral statements of the Complainant, Councillor Chowney and Councillor Lee, the Independent Persons and the external investigators report.
2. At the time of the event complained of Councillor Lee was an elected member of Hastings Borough Council and was required to observe the Code of Conduct of Hastings Borough Council.
3. Councillor Lee was at the Full Council meeting on 26th October as a Councillor and therefore was in office as the time of the alleged conduct and the Code of Conduct was in force at that time. Evidence was provided by the transcript of the recording – Appendix B of the complaint.

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4. Councillor Lee admitted that he treated Councillor Forward with a lack of respect. He said he was very sorry about that and will make a full apology to her.

Victoria Simpson addressed the Committee on the issue of sanctions. The external investigator advised that the sanctions need to be proportionate and relevant to the breach of the Code of Conduct. She added that in addition to the sanctions listed in her report members could decide to ask Councillor Lee to apologise to Councillor Forward as he had already accepted that he breached the Code of Conduct and would apologise to Councillor Forward.

Jan Gray and Susan Fellows, Independent Persons, both agreed that an apology would be an appropriate sanction under the circumstances.

The Committee retired to consider what sanctions, if any, to apply. They returned and announced the sanctions as follows:-

RESOLVED (unanimously) Councillor Bacon proposed and Councillor Sinden seconded) that:-

The Committee's decision is that Councillor Lee apologise to Councillor Forward and notifies the Monitoring Officer once he has given that apology.

Reasons for the sanction imposed:-

The Committee agreed that in light of the fact that Councillor Lee had accepted that he had breached the Code of Conduct and not treated Councillor Forward with respect but had offered to give her a full apology was an appropriate and proportionate sanction for this breach of the Code of Conduct.

6. ADDITIONAL URGENT ITEMS (IF ANY)

None.

(The Chair declared the meeting closed at. 12.02 pm)

Agenda Item 4



Agenda Item No: 1

Report to: Standards Committee

Date of Meeting: 21st March 2018

Report Title: Annual Report of Standards Committee

Report By: Christine Barkshire-Jones
Chief Legal Officer and Monitoring Officer

Purpose of Report

To report on the activities of the Standards Committee for 2016 / 2017.

Recommendation(s)

1. To note the contents of the report.

Reasons for Recommendations

1. To keep the Standards Committee advised of past complaints.
2. To inform the Standards Committee of procedures that worked well.
3. To contribute to continuous improvement of the way the Council deal with complaints about elected members.

Introduction

1. The Council's Standards Committee promotes and maintains high standards of behaviour by ensuring that all elected members comply with the Council's Code of Conduct. The Code of Conduct is found at Part 4 of the Council's Constitution. All elected members sign a declaration to say that they will comply with the Code of Conduct.
2. The Code of Conduct and revised Standards arrangements were adopted by the Council in July 2012 in order to comply with the provisions of the Localism Act 2011. This introduced delegation to the Monitoring Officer to make an initial decision on whether the complaint requires investigation, with the power to consult with the Independent Person if required and the ability to refer particular complaints to the Standards Committee if that is appropriate, for example where the complaint is sensitive and/or serious. The original report to Standards Committee dated 28th May 2012 is attached for information.
3. Standards Committee has a membership of 7, of whom 5 are elected members and 2 are independent members. The elected members sitting on the Standards Committee in the last municipal year were Councillors Roberts (Chair), Sinden (Vice-Chair), Bacon, Clarke and B Dowling. The Committee is politically balanced although not required to be so by law.
4. The Localism Act 2011 requires the Council to appoint at least one Independent Person to assist with the standards process. Council previously recommended that two Independent Persons should be appointed in case of non-availability or a conflict of interest. The Localism Act requires that the views of the Independent Person must be sought on a complaint referred for investigation before the outcome of the complaint is determined. Also, the member who is subject to the complaint may discuss the matter with the Independent Person who will provide support to the member. The Independent Person's view would also be sought in terms of any sanction imposed on a member found to be in breach of the member's Code of Conduct.
5. Margaret Sandra and Andrew Colquhoun were appointed as Independent Persons from 1st July 2013 to 31st October 2016. The Monitoring Officer received a complaint regarding a Councillor during 2016 in which both Independent Persons had a conflict of interest and neither could be involved in the standards process. This necessitated the temporary appointment of Independent Persons from Rother District Council. Sue Fellows and Jan Gray were appointed for the duration of that complaint. The Council would like to thank Margaret, Andrew, Sue and Jan for their contribution to the Standards Committee.
6. At the Council meeting on 18th October 2017, John Baker and Amanda McIntyre were appointed as Independent Persons from 1st November 2017 to 31st October 2022.

Complaints

7. In 2016 six complaints were received by the Monitoring Officer. Three went before the Assessment Sub-Committee and then the Standards Committee. The remaining three were dealt with under Monitoring Officers discretion. The three complaints that were considered by the Assessment Sub-Committee took some time to

be concluded. The decision was taken to conduct the investigations and hearings after the local election in May 2016 due to the nature of the complaints so as not to take place during purdah. There were also difficulties in scheduling meetings due to member's availability.

8. The first complaint alleged a breach of the Code of Conduct by Councillor Atkins and was referred by the Assessment Sub-Committee for investigation by the Monitoring Officer. Following consideration in public session of a report prepared by an independent investigating officer, the Committee found that Councillor Atkins had been in breach of the Code in failing to treat others with respect and conducting himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. The Committee decided that the matter should be addressed by a written apology from Councillor Atkins to the officers affected and by him attending one to one training with the Monitoring Officer on the Code of Conduct.

9. The second complaint alleged a breach of the Code of Conduct by Councillor Forward and was referred by the Assessment Sub-Committee for investigation by the Monitoring Officer. Following consideration in public session of a report prepared by an independent investigating officer, the Committee found that Councillor Forward had made a technical breach of the Code in failing to update her entry on her register of interests within 28 days of a change. The Committee decided that no further action should be taken.

10. The third complaint alleged a breach of the Code of Conduct by Councillor Lee and was referred by the Assessment Sub-Committee for investigation by the Monitoring Officer. Following consideration in public session of a report prepared by an independent investigating officer, the Committee found that Councillor Lee had been in breach of the Code in failing to treat others with respect. The Committee decided that the matter should be addressed by Councillor Lee apologising to Councillor Forward and notifying the Monitoring Officer once he gave that apology.

Monitoring Officers Discretion

11. The Monitoring Officer has discretion not to proceed with complaints where an investigation would not be in the public interest or the matter would not warrant any sanction or when the complaint is malicious or deemed not sufficiently serious. Three of the complaints received were considered under Monitoring Officer's discretion. The first of these related to a complaint regarding inappropriate use of Council equipment. The complaint lacked any substance and was politically motivated. The second complaint related to an allegation that a member had failed to declare an interest. The Monitoring Officer and Deputy Monitoring Officer consulted the Independent Persons and concluded there was no breach of the Code of Conduct. The third related to a complaint regarding a member's behaviour at a Council meeting and could not proceed due to a lack of evidence.

Training

12. A training session was arranged for members of the Standards Committee and Independent Persons in February 2016. The training was provided by Hoey Ainscough Associates Limited. One to one training was also given by the Monitoring Officer and Deputy Monitoring Officer to Councillors Bacon and Clarke in November 2016.

Wards Affected

None

Area(s) Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	Yes

Background Information

Appendix 1 - Report to Standards Committee dated 28th May 2012

Officer to Contact

Officer Name: Chris Barkshire-Jones, Chief Legal Officer and Monitoring Officer
Officer Email Address: cbarkshire-jones@hastings.gov.uk
Officer Telephone Number: 01424 451731

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Agenda Item No:

Report to: Standards Committee

Date of Meeting: 28th May 2012

Report Title: Code of Conduct and Revised Standards Arrangements - Localism Act 2011

Report By: Jane Hartnell
Head of Corporate Services

Purpose of Report

To update Members on the steps required to comply with the Localism Act 2011, and to seek Members views on the draft Code of Conduct and revised Standards Arrangements set out in Appendix 1, 2, and 3 of the report.

Recommendation(s)

- 1. That Standards Committee recommends to Cabinet, that the Council be recommended to:**
- 2. Adopt the Code of Conduct as set out in Appendix 1 to take effect from 1st July 2012.**
- 3. Delegate authority to the Monitoring Officer in consultation with the Chair of the Standards Committee and the Chief Legal Officer, to make any necessary changes to the Hearings (Appendix 2) and Investigations procedures (Appendix 3) in order to comply with the regulations when published.**
- 4. Appoint a local Standards Committee to consist of five members of Hastings Borough Council.**
- 5. The Monitoring Officer be delegated authority to proceed with the appointment of Individual Persons in accordance with the yet to be published regulations**

Reasons for Recommendations

The Council is required to agree and put in place its arrangements for standards and Members Code of Conduct by 1st July 2012.

Introduction

Background

1. The Localism Act 2011 repeals Section 55 of the Local Government Act 2000 which provides for the current statutory framework for Standard Committees which promotes and maintains high standards of conduct by councillors.
2. The Council is however required to establish its own arrangements which need to be in place by 1st July 2012.

Standards Committee

3. The Localism Act requires the Council to have a committee to deal with standards issues, i.e. to hear complaints against Members of the Council. However the Council has a choice as to whether it wishes to maintain a separate Standards Committee or whether the functions should be delegated to an existing Committee.
4. Any voluntary Standards Committee or Sub-Committee would be an ordinary committee established under s101 and s102 of the Local Government Act 1972, and as such would be subject to the normal proportionality rules.
5. For the purposes of this report, it has been presumed that Members will wish to maintain a separate Standards Committee, and the subsequent draft Code, protocols and procedures have been developed in the light of this presumption.
6. The Localism Act also establishes a new category of Independent Persons who must be consulted at various stages of the complaints process. Unfortunately, the legislation appears to prevent the current independent members from serving as Independent Persons for a period of five years. This issue is addressed later in paragraph 25. However, it is understood that the current co-opted Members' terms of office will need to come to an end as from the date the new provisions come into force (1 July 2012).

Code of Conduct

7. The Localism Act has repealed the '10 General Principles of Conduct' and the current model Code of Conduct. However, the Council is required to adopt a Code of Conduct (the Code) which should be consistent with the 7 Nolan principles in public life, namely:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

8. The Code only applies to Members when they are acting in their official capacity and the Act states that Members will no longer have to give an undertaking to comply with the Code, unless required to do so by standing orders. The effect of signing the Hastings Borough Council Code as drafted however would mean that Members will be giving this undertaking.
9. Appendix 1 sets out a draft Code for Members consideration. This draft Code has been developed collectively by Solicitors and Monitoring Officers in East Sussex councils; it incorporates best practice and elements of the Local Government Association's template draft Code. It is proposed that each district and borough adopt the draft Code to give consistency within the local area.
10. Much of the current code has been retained. This will have the benefit of being familiar to Members, will reduce the need for training, and has thus far delivered consistently high standards of conduct at Hastings.
11. It is recognised however, that there are concerns about the current Code, particularly around the ability of Members to speak when a prejudicial interest arises out of their membership of an outside body. The new draft Code therefore includes the ability for Members to speak, but not vote in such situations in the future.
12. Regulations yet to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), which it is believed will be similar to the current prejudicial interest. The provisions of the Act also require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests. The draft Code provides for this at Paragraph 8.
13. The Act also prohibits Members with a DPI from participating in authority business. However Council will be advised to continue to comply with the current constitution which requires Members to withdraw from the meeting room, as this will ensure the integrity of decisions.
14. The Council's new Code of Conduct is required to deal with:
 - General Conduct rules to give effect to the seven principles. This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct.
 - Registration and disclosure of interests other than DPIs effectively replacing the current personal interest provisions. However until we know what will constitute a DPI it is difficult to know what additional disclosure would be appropriate.
15. Members are therefore reminded that the draft Code in Appendix A, is not YET the complete version of the Code for the reasons mentioned above.

Dealing with Misconduct Complaints

16. The Act requires that the Council adopt "arrangements" for dealing with complaints of breach of the Code of Conduct. The Act repeals the requirements for separate referrals, reviews and hearing sub-committees and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed as the statutory provisions no longer give the Standards Committee or the

Monitoring Officer special powers to deal with complaints, it is necessary for the Council to delegate appropriate powers to the Standards Committee and to the Monitoring Officer. A suggested arrangement for the Hearings Procedure is set out in Appendix 2.

Hearings Procedure

17. Members are advised to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether the complaint requires investigation, with the power to consult with the Independent Person if required and the ability to refer particular complaints to the Standards Committee if that is felt appropriate, for example where the complaint is sensitive and/or serious.
18. These arrangements will also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that she should be accountable for its discharge for this purpose. Members may also feel it is appropriate for the Monitoring Officer to make periodic reports to the Standards Committee which would enable her to report on the number and nature of complaints received, and draw to the Members attention areas where training or other action might avoid further complaints, and to keep the Committee advised of progress on investigations and costs.
19. Where a formal investigation finds no evidence of failure to comply with the Code the decision to take no further action should be left with the Monitoring Officer. Where formal investigation finds evidence of a failure to comply with the Code of Conduct it may still be appropriate for some local resolution to be sought. It may be appropriate in these circumstances for the Monitoring officer to consult with the Independent Person, and possibly the complainant.
20. In other cases where the formal investigation finds evidence of a failure to comply with the Code of Conduct it would be necessary for the Standards Committee to hold a hearing at which the Member against whom the complaint has been made can respond to the investigation report and the Committee can decide whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.
21. As with the Code of Conduct the East Sussex authorities are working together to develop a single process for dealing with complaints where an investigation is necessary. However until such time as that is circulated a suggested Investigations Procedure is to be found at Appendix 3, and Members will be advised to adopt this.

Sanctions

22. The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members. So, where failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited but might include:
 - A formal letter to the Member in question
 - Formal censure through a motion

- Recommendation to the Member's political group that they are removed from Committees; or
- Issuing a press release which details the breach.

23. The Association of Councils Secretaries and Solicitors (ACSeS) have taken legal advice and the suggested sanction in the hearing procedure (Appendix 2) has been based on this advice. There is no requirement to put in place any appeals mechanism, though any decision would obviously be open to Judicial Review by the High Court if it was wrong in law or patently unreasonable.
24. It may be that the Monitoring officer would suggest mediation or training instead of referring the matter to Standards Committee as part of the discretionary stage.

Independent Persons

25. The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person. The Independent Person must be appointed through a process of public advertisements, applications and appointment by a positive vote of a majority of all members at Full Council. The person is not considered to be "independent" if:

- S/he is, or has been within the last five years, an elected or co-opted member or officer of the Borough Council.
- S/he is or has been within the last five years, an elected or co-opted member of any Committee or Sub-Committee of the Borough Council. (which would preclude any of the current co-opted independent members of the Standards Committee from being appointed an Independent Person); or
- S/he is a relative or close friend of a current elected or co-opted member or officer of Hastings Borough Council, or any elected or co-opted member of any Committee or Sub-Committee of Hastings Borough Council. There is a wide definition of "relative" which includes the candidate's spouse or civil partner and various others connected to him.

26. The functions of the Independent Person are:

- They must be consulted by the authority and their views taken into account before making a decision on whether the Member failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member;
- They may be consulted by the authority in respect of a Standards complaint at any other stage; and
- They may be consulted by a Member of the Council against whom a complaint has been made.

27. The final point causes some problems as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might therefore be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

28. There may therefore be benefits in appointing more than one Independent Person, and consideration should be given to whether this authority would wish to join with

the East Sussex authorities to recruit a panel of Independent Persons who would be available as necessary, this would offer a cost and efficiency advantage. However if members were minded not to go down this route, we have previously appointed 2 members and it is suggested we would wish to continue to do so.

29. It is understood that Ministers are minded to include in regulations some transitional provisions for authorities to appoint persons as independent persons who, although not chairs or members of standard committees at the time of appointment or thereafter, have held such posts within the last years. The regulations are expected to cover other requirements for appointing independent persons e.g. public advertisement, and so, until the regulations emerge, the Council can make no further significant progress in relation to making appointments.
30. Consideration will need to be given to whether an allowance or expenses will be paid to the Independent Person. These payments no longer come within the scheme of Members Allowances and can be determined without reference to the Independent Remuneration Panel. The role of the Independent Person is likely to be substantially different to the current Independent Members, i.e. they can be invited to attend the meetings of the Standards Committee but will not be a voting member and cannot chair the Committee as is currently the case. It is likely that they will need to attend all hearings and only give their views once all evidence and submissions have been made. A report will be brought forward to Council at a later date to determine this issue.

The Register of Members' Interests

31. The Monitoring Officer continues to be required to maintain a register of interests which must be available for inspection and available on the Council's website.
32. As previously mentioned the Act creates a power for the Secretary of State to publish regulations explaining what will be classified as pecuniary interests and disclosable pecuniary interests. It is anticipated that they will be similar to the current prejudicial interests.
33. Whilst the intention was to simplify the registration requirements, it does appear as though the Act extends the requirements for registration as it does expressly state that DPIs arise where they relate to not only the Member's own interest but also those of the Member's spouse or civil partner or someone living with the Member in a similar capacity.
34. The Act is also clear that each elected or co-opted Member must register all DPIs within 28 days of becoming a Member. Whilst there appears to be no continuing requirement for Members to keep the register up-to-date it is likely that Members will wish to register new interests from time to time as this avoids the need for disclosure at meetings.
35. The most significant change for Members in relation to the disclosure of interests is that it will become a criminal offence to fail to register an interest, fail to notify a meeting of a DPI where that interest is not already on the register, or to take 'steps or any further steps in relation to the matter' where a DPI arises.

36. Such offences are liable on summary conviction to a fine not exceeding level 5 (£5,000) and the court may also disqualify the Member for a period of up to 5 years for being a Member or co-opted Member of the Council or any other relevant authority.

Disclosure of Interests and Withdrawal from Meetings

37. If a Member has a DPI in any matter s/he must not participate in any discussion of the matter at the meeting or participate in any vote unless he has obtained a dispensation. Failure to comply with the requirements is a criminal offence. The Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, and failure to comply with these would be a breach of the Code of Conduct but not a criminal offence.
38. The requirement to withdraw from the meeting room can be covered by Standing Orders, as stated previously Council will be advised to continue to comply with the current constitution which requires Members to withdraw from the meeting room, including the public gallery at the appropriate time when they have a prejudicial interest or DPI, except where he/she is permitted to remain as a result of the grant of a dispensation. It is believed that this will continue to ensure the integrity of decisions made.

Sensitive Interests

39. The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests. So where a Member is concerned that disclosure of the detail of an interest at a meeting or on the register of members’ interests would lead to the member or a person connected with him/her being subject to violence or intimidation, s/he may request the Monitoring Officer to agree that the interest is a “sensitive interest”.
40. If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members’ interests.

Dispensations

41. In future a dispensation will be able to be granted in the following circumstances:
- That so many Members of the decision making body have DPIs in a matter that it would “impede the transaction of the business”;
 - That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of the vote on any matter;
 - That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - That without the dispensation, no member of the Cabinet would be able to participate on this matter; or

- That the authority considers that it is otherwise appropriate to grant a dispensation.

42. This power can be delegated to the Standards Committee or the Monitoring Officer.

Conclusion

43. The Localism Act provides us with the opportunity to simplify our processes relating to Standards. Whilst regulations providing us with more details are still awaited it is important that decisions in relation to the new regime are taken as soon as possible to enable the new processes to be in place by 1 July 2012.

44. The Standards Committee is invited to consider the contents of this report and the suggested recommendation.

45. Risk Assessment Statement - If the Council does not consider the implications of the Localism Act and put in place the required changes to the Standards Regime they would be failing to comply with legislation.

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St. Helens, Tressell, West St. Leonards, Wishing Tree

Area(s) Affected

Central Hastings, East Hastings, North St. Leonards, South St. Leonards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	Yes

Background Information

Appendix 1 - Draft Hastings Borough Council Code of Conduct for Members
 Appendix 2 - Draft Hearings Procedure
 Appendix 3 - Draft Investigations Procedure

Officer to Contact

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