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**Standards Committee Agenda**

**Thursday, 16 May 2019 at 6.00 pm**

Council Chamber, Muriel Matters House, Breeds Place, Hastings, TN34 3UY.  
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charding@hastings.gov.uk

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# Agenda Item 3 Public Document Pack

## STANDARDS COMMITTEE

21 MARCH 2018

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

Apologies for absence were noted for Councillor Dowling

### 7. DECLARATIONS OF INTEREST

None.

### 8. MINUTES OF THE PREVIOUS MEETING HELD ON 29 JUNE 2017

**RESOLVED that the minutes from the last meeting held on 29 June 2017 be approved and signed by the Chair as a correct record of the meeting.**

### 9. ANNUAL REPORT OF STANDARDS COMMITTEE

The Chief Legal Officer and Monitoring Officer firstly spoke through some of the procedures that seemed to be effective in the last year. In regards to the council objectives of transformation and continuous improvement, she stated that dates were already organised to train cohort of Standards Committee members after the elections in May. There were also plans to extend this training to Independent Persons. This is so that both parties can receive the support they need to fulfil their role on the Standards Committee.

She then reported on the activities of the Standards Committee for 2016/17. 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. All elected members sign a declaration to say that they will comply with the Code of Conduct. The Code was adopted alongside the revised Standards arrangements in July 2012 under the provisions of the Localism Act 2011. This introduced delegation to the Monitoring Officer to make an initial decision on whether the complaint required investigation.

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.

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 always be sought on a complaint referred for investigation before the outcome of the complaint is

## STANDARDS COMMITTEE

21 MARCH 2018

determined. Members who are the subject of a complaint can also discuss the matter with the Independent Person, who will provide support to them. 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. It was further noted that the Independent Persons were required to discuss a matter in the case of disciplinary action involving one of the statutory roles, such as the Head of Paid Services, Monitoring Officer and Section 151 Officer.

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.

In regards to complaints, 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 first complaint alleged a breach of the Code of Conduct by a member, 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 the member had been in breach of the Code, 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 the member to those affected.

The second complaint alleged a breach of the Code of Conduct by a member 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 the member had made a technical breach of the Code in failing to update their entry on her register of interests within 28 days of a change. The Committee decided that no further action should be taken.

The third complaint alleged a breach of the Code of Conduct by a member 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 the member had been in breach of the Code in failing to treat others with respect. The Committee decided that the matter should be addressed by the member apologising to the person affected and would notify the Monitoring Officer once they gave that apology.

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.

## **STANDARDS COMMITTEE**

**21 MARCH 2018**

Members asked whether the costs of time and resources investigating a case could be bypassed if an apology were received before an investigation was necessary. The reply was that it depended on the situation, and what action people wished to take.

A query was raised in regards to whether the Nolan Principles of Public Life could be re-explained in a detailed way for members in training.

Thanks were given to the Independent Persons for all their help and support throughout the year.

(The Chair declared the meeting closed at 5.00pm)

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# Agenda Item 4



**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

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## **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.

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## **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**

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## **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.

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## 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**

Chris Barkshire-Jones

Chief Legal Officer  
(01424) 451731  
cbarkshire-jones@hastings.goc.uk

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**Report to:** Annual Standards Committee

**Date of Meeting:** 16<sup>th</sup> May 2019

**Report Title:** Annual Report of Standards Committee

**Report By:** Chris Barkshire-Jones  
Chief Legal Officer and Statutory Monitoring Officer

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### **Purpose of Report**

To report on the activities of the Standards Committee for 2018.

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### **Recommendation(s)**

1. To note the contents of the report.

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### **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.

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## 1. Introduction

1.1 The Council's Standards Committee promotes and maintains high standards of behaviour by ensuring that all elected councillors comply with the Council's Code of Conduct. The Code of Conduct is found at Part 5 of the Council's Constitution. All elected councillors sign a declaration to say that they will comply with the Code of Conduct within 4 days of being elected.

1.2 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 Monitoring Officer has discretion to deal with some complaints that in her opinion do not need to be considered further as set out in detail in paragraph 3 of this report. However she considers it good practice to inform the Chair of Standards Committee and the Independent Persons of any decision she makes in this way. The original report to Standards Committee dated 28th May 2012 is attached for information.

1.3 Standards Committee has a membership of 7, of whom 5 are elected councillors and 2 are independent persons. The elected councillors sitting on the Standards Committee in the last municipal year were Councillors Barnett (Chair), Roberts (Vice-Chair), Bishop, Edwards and Forward. The Committee is politically balanced although not required to be so by law.

1.4 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 councillor who is subject to the complaint may discuss the matter with the Independent Person who will provide support to the councillor. The Independent Person's view would also be sought in terms of any sanction imposed on a councillor found to be in breach of the Code of Conduct.

1.5. 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.

## 2. Complaints

2.1 In 2018 seven complaints were received by the Monitoring Officer. Three are ongoing investigations pending conclusion of the European election on 23<sup>rd</sup> May 2019 so as not to take place during purdah. The remaining four were dealt with under Monitoring Officer's discretion.

### 3. Monitoring Officers Discretion

3.1 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. Four of the complaints received were considered under Monitoring Officer's discretion. The first of these related to a complaint following a heated debate at a Full Council meeting which had spilled over after the Council meeting had concluded and involved a Labour councillor saying something rude to a Conservative councillor for which he apologised and the two councillors shook hands. The Monitoring Officer sought the view of both Independent Persons and the Chair of Standards Committee and concluded that apologies had been offered and accepted. The complainant was advised that no further action would be taken.

3.2 The second complaint related to an allegation that a councillor called another councillor a liar in a Full Council meeting. The Monitoring Officer and Deputy Monitoring Officer watched the recording of the meetings concerned and did not uphold the claim as they considered there to be a misunderstanding of language. The Monitoring Officer sought the view of both Independent Persons and the Chair of Standards Committee. The complainant was advised that no further action would be taken.

3.3 The third complaint came from a member of the public and related to an allegation that a councillor had been involved in a campaign of bullying and harassment involving users of Alexandra Park. The Monitoring Officer and Deputy Monitoring Officer spoke to the councillor involved and made enquiries of Council officers. The Monitoring Officer asked the complainant for the person who alleged the complaint to contact her to discuss the complaint. No response was received, the Monitoring Officer chased again and no response was received, therefore the complaint could not proceed due to a lack of evidence. The Monitoring Officer sought the view of both Independent Persons and the Chair of Standards Committee.

3.4 The fourth complaint related to an allegation that a conservative councillor called a labour councillor anti-semitic in a Full Council meeting. The Monitoring Officer and Deputy Monitoring Officer watched the recording of the meeting concerned and did not uphold the claim as they considered that the statement made was against the Labour Party given the national coverage the issue was receiving and not made against the individual concerned. The Monitoring Officer sought the view of both Independent Persons and the Chair of Standards Committee. The complainant was advised that no further action would be taken.

### Training

12. A training session was arranged for members of the Standards Committee and Independent Persons in October 2018. The training was provided by the Monitoring Officer and Deputy Monitoring Officer.

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**Wards Affected**

None

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**Policy Implications**

**Have you checked this report for plain English and readability? Yes**

Climate change implications considered? Yes

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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	Yes
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

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**Additional Information**

Appendix 1 - original report to Standards Committee dated 28th May 2012

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**Officer to Contact**

Christine Barkshire-Jones  
[cbarkshire-jones@hastings.gov.uk](mailto:cbarkshire-jones@hastings.gov.uk)  
01424 451731

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# Agenda Item 5



**Report to:** Annual Standards Committee

**Date of Meeting:** 16<sup>th</sup> May 2019

**Report Title:** Review of Investigations and Hearings Procedure

**Report By:** Chris Barkshire-Jones Chief Legal Officer and Statutory Monitoring Officer

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## **Purpose of Report**

To review the Standards Hearings and Investigations procedures originally adopted by Council in 2012.

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## **Recommendation(s)**

1. To agree the amended procedures for Standards Hearings and Investigations.

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## **Reasons for Recommendations**

The Standards Hearings and Investigation procedures have not been reviewed since 2012.

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## 1. Background

1.1 Under the old Standards regime every complaint had to be referred to a sub assessment of the Standards Committee. This was held in private and consisted of three members of the whole Standards Committee. The reasoning behind this is that a private meeting is normally convened to seek Monitoring Officer (or Deputy Monitoring Officer) instruction as to whether an investigation is necessary or the matter ceases there. Also under that regime there used to be an appeal process so if an appeal came in the other half of the Standards Committee could hear it.

## 2. Current Procedure

2.1 There still could be a need for initial assessment from a meeting held in private. Although this can be by the whole Standards Committee. Decisions to be made here are instruction to the Monitoring Officer (or Deputy Monitoring Officer) to carry out further investigation, instruct the Monitoring Officer (or Deputy Monitoring Officer) to book a hearing in public or for the matter to cease there as the Standards Committee do not believe there is any breach. An additional decision for the Standards Committee to make is where there is a technical breach such as not declaring a personal interest. Obviously all decisions need to be decided on a case by case basis but if the councillor involved has remedied the technical breach a full public hearing should not be necessary. It is disproportionate in stress to those concerned and cost to the Council.

2.2 For some cases it may be necessary for the Monitoring Officer (or Deputy Monitoring Officer) to ask another Local Authorities Monitoring Officer or another Local Authorities Standards Committee to hear the complaint due to the sensitivity of the complaint or a conflict of interest.

2.3 The Localism Act 2011 gave the Monitoring Officer discretionary power to deal with complaints where in her opinion it does not warrant referral to a formal Standards Committee. In those cases it is usual practice for the Monitoring Officer (or Deputy Monitoring Officer) to liaise with the Chair of Standards Committee (or Vice-Chair in his / her absence) and one or both Independent Persons.

2.4 The Monitoring Officer brings an annual report to the Standards Committee to inform members of the Committee how many complaints have been received in the previous municipal year and how they have been dealt with.

## 3. New Procedure

3.1 The Code of Conduct Investigation Procedure set out at Appendix 1 sets out the procedure which will be followed once a decision has been taken by a sub-assessment committee that an allegation of misconduct by a member should be investigated further.

3.2 The Code of Conduct Hearings Procedure set out at Appendix 2 sets out the process which will be followed when a decision has been taken that a public hearing as to whether a councillor has breached the code of conduct is required. This would normally follow a private sub-assessment hearing where members of the Standards Committee will consider if a public hearing is necessary.

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**Wards Affected**

None

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**Policy Implications**

**Have you checked this report for plain English and readability? Yes**

**Climate change implications considered? Yes**

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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	Yes
Organisational Consequences	Yes
Local People's Views	No
Anti-Poverty	No

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**Additional Information**

**Appendix 1 - Code of Conduct Investigation Procedure**

**Appendix 2 - Code of Conduct Hearings Procedure**

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**Officer to Contact**

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Introduction

An investigation can be carried out by the Monitoring Officer and/or the Deputy Monitoring Officer. This would normally entail contact with the complainant and the councillor complained about together with contact with the Independent person/s and the Chair of Standards Committee (or Vice Chair in his / her absence). Depending on the circumstances the Monitoring Officer (or Deputy Monitoring Officer) can deal with the complaint under discretionary powers or refer the issue to a sub-assessment committee for consideration.

This document sets out the procedure which will be followed once a decision has been taken by a sub-assessment committee that an allegation of misconduct by a councillor should be investigated further.

The appointment of an Investigating Officer

Upon deciding to refer an allegation for investigation the Monitoring Officer (or Deputy Monitoring Officer) may appoint an Investigating Officer and instruct them to conduct an investigation of the allegation and report on it. The Monitoring Officer (or Deputy Monitoring Officer) may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an officer of this authority, an officer of another authority or an external Investigating Officer. They will not be connected to the Standards Committee in any way.

The role of the Investigating Officer

The role of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented in their report.

Subject to the agreement of the Monitoring Officer (or Deputy Monitoring Officer), the Investigating Officer may appoint a person/s to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

Notification requirements

Once an Investigating Officer has been appointed the Monitoring Officer (or Deputy Monitoring Officer) will notify the councillor against whom the allegation has been made that the matter is being referred for investigation and inform them who is conducting the investigation.

The Monitoring Officer (or Deputy Monitoring Officer) will notify the complainant that an investigation will take place and that they may be contacted on relation to that investigation.

Conduct of the Investigation

The Investigating Officer shall have a broad discretion as to how they conduct the investigation.

They may require the Councillor and the complainant to provide them with information and/or documents which are relevant to the investigation. They may require them to provide details of other people who may be able to assist with the investigation.

It may assist the Investigating Officer to set out a plan for how they are going to conduct the investigation and they may consult the Monitoring Officer (or Deputy Monitoring Officer) at any stage of the investigation.

The Investigating Officer may request any person to attend an interview with them and/or provide them with documents and/or information. Reasonable expenses may be paid.

#### Referral to the Monitoring Officer

The Investigating Officer may refer the matter back to the Monitoring Officer (or Deputy Monitoring Officer) if it appears to them appropriate to do so. For example, if the councillor is seriously ill or the decision to investigate should be reconsidered in the light of new evidence. The Monitoring Officer (or Deputy Monitoring Officer) may call another sub-assessment hearing in these circumstances.

#### Deferral of Investigation

The Monitoring Officer (or Deputy Monitoring Officer) has discretion to defer the investigation if it appears appropriate to do so. For example if there is a criminal investigation taking place or an election.

#### Confidentiality

The Investigating Officer shall request that anyone contacted in relation to the investigation maintain confidentiality in order to maintain the integrity of the process.

#### Draft Report

When the Investigating Officer is satisfied that they have sufficient information or has obtained as much information as is reasonably practicable to obtain they shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the code. A summary of the allegation, the response of the councillor, the information, documents and evidence taken during the course of the investigation, a statement of findings and the Investigating Officer's conclusions as to whether the Code of Conduct has been breached.

The draft report should be sent to the Monitoring Officer (or Deputy Monitoring Officer) who in turn will pass to the councillor and complainant for comment. The Investigating Officer may wish to take further action and/or amend the report once in receipt of comments before producing the final report.

#### Final Report

The final report should conclude whether there has been a breach of the Code of Conduct giving reasons why and supporting that conclusion with reference to the evidence of the investigation.

#### Action on receipt of the report

If the Investigating Officer concludes there is no evidence of a failure to comply with the code of Conduct, the Monitoring Officer (or Deputy Monitoring Officer) will notify all relevant parties. This may, but does not have to necessitate a further sub-assessment hearing.

If the Monitoring Officer (or Deputy Monitoring Officer) is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

If the report concludes there is evidence of a failure to comply with the Code of Conduct then the Monitoring Officer (or Deputy Monitoring Officer) will liaise with the Chair of Standards Committee and 1 or more Independent Person to determine if a public hearing is needed.

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The following process will be followed when a decision has been taken that a public hearing as to whether a councillor has breached the Code of Conduct is required. This would normally follow a private sub-assessment hearing where members of Standards Committee will consider if a public hearing is necessary. The sub-assessment committee can decide if the complaint warrants further investigation, that there is a technical breach that does not warrant a full hearing or that no further action is needed for whatever reason.

#### Pre Hearing Process

The Monitoring Officer (or Deputy Monitoring Officer) will, where possible, arrange for the Standards Committee to meet to hear the complaint within 3 months of receiving the complaint or an Investigating Officer's report. All relevant parties can attend. Sufficient notice of the hearing date must be given. The hearing will be arranged for one day or consecutive days where possible to avoid the need to have gaps between sittings or lengthy days.

The Standards Committee are subject to the normal requirements on confidential and exempt information as any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer (or Deputy Monitoring Officer) will consider whether these provisions apply in advance of the hearing and may consult any person for their views.

The Monitoring Officer (or Deputy Monitoring Officer) will require the councillor to give their response to the Investigating Officer's report in order to identify what it is likely to be agreed and what is likely to be in contention at the hearing.

Any evidence to be relied upon by any party should have been provided as part of the investigation process. If there is further evidence that any relevant party wishes to rely on they must obtain permission from the Monitoring Officer (or Deputy Monitoring Officer) as soon as possible but in any event at least 5 clear working days before the hearing. The Standards Committee will not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer (or Deputy Monitoring Officer) will decide what evidence will need to be heard and what written evidence can be read at the hearing after taking account of the views of the relevant parties. If needed the Monitoring Officer (or Deputy Monitoring Officer) can ask the Chair of the Standards Committee (or Vice-Chair in his / her absence) to issue Directions for the hearing.

The Monitoring Officer (or Deputy Monitoring Officer) will gather all the relevant facts agreed or in dispute within her report.

One of the Independent Persons can act as a point of contact for the councillor.

The Council may pay the reasonable expenses of witnesses needed to attend the hearing.

## The Hearing

The hearing will generally take place in public.

One of the Independent Persons (who has not supported the councillor) will be present to comment.

If the councillor does not attend the hearing the Committee may adjourn the hearing or may continue to reach a decision on the basis of the investigating Officer's report and any evidence they hear.

Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Standards Committee will have due regard to the seriousness of the proceedings for those involved, the council and the public.

The Committee will decide disputed issues and whether the councillor has breached the Code of Conduct on the balance of probabilities.

The Committee can ask any person being disruptive during the hearing to leave.

In certain circumstances the hearing could be arranged to be heard by another local authority's Standards Committee.

## Representation

The councillor may choose to be represented by a Solicitor, Barrister or any other person. They will have to bear the cost of being represented.

The Legal advisor to the Standards Committee will discuss with relevant parties as to order of evidence and whether opening and closing arguments would be helpful.

## Evidence

The Committee will control the procedure and evidence presented at a hearing including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion on the advice of the legal advisor.

The legal advisor will provide a procedure note to assist the Chair of the Standards Committee (or Vice-Chair in his / her absence) for each hearing.

## At the Hearing

The Monitoring Officer (or Deputy Monitoring Officer) will present her/his report. The Investigating Officer will present his/her report. The Councillor will make his/her submission. Relevant parties may ask each other questions as per the procedure.

## Decision

The Committee must consult the Independent Person in reaching their decision.

The Committee will retire to consider their decision. The legal advisor may assist them in constructing the reasons for their decision.

The Committee will reach a decision as to whether the subject member has breached the Code of Conduct. If they decide that the Councillor has not breached the Code of Conduct they will take no further action. If they decide that the Councillor has breached the Code of Conduct they should go on to decide what sanction, if any, is appropriate.

### Sanctions

The Committee must consult the Independent Person before imposing any sanction and give the Councillor the opportunity to make representations.

The Committee should consider all mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the councillor now? Have they apologised?
- Has the councillor previously been dealt with for a breach of the Code of Conduct?

The following are examples of mitigating and aggravating factors (lists not to be regarded as exhaustive)

### Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct.
- A previous record of good service.
- Evidence of ill health at the time of the breach.

### Aggravating Factors

- Dishonesty.
- Continuing to deny the facts or blaming other people.
- Evidence of a failure to follow advice or warnings.

The priority of the Committee should be to ensure that there are no further breaches of the code and that public confidence is maintained.

### Sanctions

The sanctions available to the Committee are:

- Publish its findings in respect of the councillor's conduct.
- Write a formal letter to the councillor found to have breached the Code of Conduct.
- Report its findings to Council for information.
- Seek formal censure by motion.
- Recommend to the Councillor's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he or she be removed from any or all Committees of the Council.
- Recommend to the Leader of the Council that the councillor be removed from the Cabinet or removed from particular Portfolio responsibilities.

- Instruct the Monitoring Officer (or Deputy Monitoring Officer) to arrange training, mediation or other appropriate remedy, for the member.

Notice of decision

As soon as is reasonably practicable after the hearing the legal advisor shall prepare a formal decision notice reflecting the Committees reasons for their decision. Copies will be sent to all relevant parties and published as part of the minutes of the meeting.

# Agenda Item 6



**Report to:** Annual Standards Committee

**Date of Meeting:** 16<sup>th</sup> May 2019

**Report Title:** Local Government Ethical Standards

**Report By:** Chris Barkshire-Jones  
Chief Legal Officer and Statutory Monitoring Officer

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## **Purpose of Report**

For information to the Standards Committee that there will be future changes in legislation and best practise that will affect the Standards Procedure.

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## **Recommendation(s)**

1. To note the proposed recommendations and content of the report Local Government Ethical Standards published January 2019.

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## **Reasons for Recommendations**

To inform the Standards Committee of proposed changes in procedure.

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## 1. Introduction

- 1.1 The Localism Act 2011 brought fundamental changes to the Standards regime undertaken by local authorities. Previously there had been a regulatory board (the Standards Board of England, hearings were chaired by an Independent person who had voting rights and the system had ‘teeth’ in the sanctions that it imposed. All Local Authorities adhered to the same system.
- 1.2 The new system lost much of that including any meaningful sanctions. Local Authorities just had to introduce their own codes and the consistency or practice was lost. Early 2018 saw the Committee on Standards in Public Life undertake a review of local government standards. It produced a report entitled ‘Local Government Ethical Standards’ published in January 2019 which made recommendations and identified best practice to improve ethical standards in local government as some aspects of the current system are not working. <https://www.gov.uk/government/publications/local-government-ethical-standards-report>

## 2. Currently

- 2.1 Breaches of codes are dealt with by the Council in the following way; Allegations of misconduct are usually first considered by the Monitoring Officer, who may decide that a formal investigation is necessary. This will be undertaken by the Monitoring Officer, a deputy, or by an external investigator.
- 2.2 Where a complaint is formally investigated, the views of an Independent Person must be taken into account before a decision is made.
- 2.3 A decision can be made by the Monitoring Officer, but many council’s maintain a Standards Committee to make decisions on allegations or to review decisions taken by the Monitoring Officer.
- 2.4 The authority may impose a sanction – which cannot include suspension or disqualification – but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions which require positive action by the councillor, for example, an apology or training.



2.5 The Recommendations (excluding those that relate to Parishes) are as follows:

- The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.
- The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests
- Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit Local Authorities to presume so when deciding upon code of conduct breaches
- Section 27(2) of the Localism Act 2011 should be amended to state that a Local Authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the Local Authority.
- The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.
- Local Authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.
- Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter.
- The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of 2 years, renewable once.

- The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.
- A Local Authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.
- Local Authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.
- Local Authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.
- Councillors should be given the right to appeal to the Local Government Ombudsman if their Local Authority imposes a period of suspension for breaching the code of conduct.
- The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the Local Authority
- The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.
- Local Authorities should be given the power to suspend councillors, without allowances, for up to six months.
- The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.
- The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

- The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.
- The Local Government Transparency Code should be updated to provide that Local Authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.
- Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.
- Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.
- Local Government Association corporate peer reviews should also include consideration of a Local Authority's processes for maintaining ethical standards.

#### **List of suggested best practice (excluding those that relate to Parishes)**

- Local Authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.
- Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.
- Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.
- An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.
- Local Authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

- Councils should publish a clear and straightforward public interest test against which allegations are filtered.
- Local Authorities should have access to at least two Independent Persons.
- An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.
- Where a Local Authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and of any sanction applied.
- A Local Authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.
- A Local Authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.
- Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by Local Authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.
- Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

### 3. Sanctions

- 3.1 Currently when a councillor is found to have broken the code of conduct there is no requirement to comply with remedial action. This is a significant weakness in the system, as is the lack of more punitive sanctions to address more serious breaches or

repeated breaches of the code. Removing the ability to suspend or disqualify councillors has had disciplinary and reputational consequences. Party disciplinary processes frequently fill the gap, but have a number of drawbacks. Ultimately, public confidence will only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are seen to be imposed fairly and in a timely way. There are strong reasons to introduce a power of suspension without allowances for up to six months for significant breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests or in cases of repeated breaches or repeated non-compliance with lower level sanctions. Local Authorities also need clarification if they can lawfully impose other sanctions such as barring councillors from council premises or withdrawing facilities.

#### 4. Conclusion

- 4.1 High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy. Let's hope that the proposed recommendations and best practice suggestions bring this about.

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#### Wards Affected

None

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#### Policy Implications

[Have you checked this report for plain English and readability? Yes](#)

[Climate change implications considered? Yes](#)

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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	Yes
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

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#### Additional Information

Report Template v29.0

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