

SUBJECT:	Annual Review of the Code of Conduct and Complaints Procedure
REPORT OF:	Monitoring Officer
RESPONSIBLE OFFICER	Joanna Swift
REPORT AUTHOR	Joanna Swift
WARD/S AFFECTED	None

1. Purpose of Report

To consider if the code of conduct and complaints procedures adopted by the Council in accordance with the Localism Act in 2011, remain fit for purpose.

RECOMMENDATIONS

1. That the code of conduct remains fit for purpose.
2. That the arrangements for dealing with complaints be revised as set out in Appendix 3.
2. That the revised assessment criteria at Appendix 3, Annex 3 be agreed
3. That the proposed procedure for Hearing Committees at Appendix 3, Annexes 5 and 6 be agreed
4. That the Committee consider the draft Protocol with Thames Valley Police at Appendix 3, Annex 7 for reporting alleged breaches of disclosable pecuniary interests.
5. That the Monitoring Officer in consultation with the Chairman of the Committee and the Independent Person be authorised to agree the final version of the Protocol.

2. Reasons for Recommendations

It is good practise for the Council to review its adopted policies and procedures on a regular basis to ensure they remain relevant and effective. This annual review has been brought forward following comments made by the Local Government Ombudsman in a recent decision.

3. Content of Report

- 3.1 As members are aware the Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct amongst its elected and co-opted members, to adopt a code governing member conduct and to have arrangements in place

for dealing with any complaints that members may have breached the code of conduct. Any complaints that town or parish councillors have breached their council's code of conduct are covered by the District Council's arrangements.

- 3.2 Under the Act and accompanying statutory regulations members must disclose any pecuniary interests (DPI's) held by themselves or their spouse/partners in items of Council business. Failure to disclose a DPI is a criminal offence.

THE CODE OF CONDUCT

- 3.3 The Act gives the Council discretion over the contents of their code of conduct provided that it accords with the following 7 principles of conduct in public life:-
- selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership
- 3.4 The Council's current code of conduct was adopted on 24 July 2012 and is attached at Appendix 1 for reference. It is based on a lighter-touch set of general obligations than the previous national model code but retains the requirement for members to disclose non-pecuniary personal and prejudicial interests, in addition to the new statutory DPI's. This was considered vital in view of the Council's regulatory role in determining planning and licencing applications. Chiltern District Council has adopted the same form of code. It is considered that the obligations in the code of conduct are generally understood by Members and that declarations of interest are being made appropriately. No revisions are therefore recommended at this time.

THE COMPLAINTS PROCEDURE

- 3.5 The Act also gives the Council discretion on the arrangements it adopts for dealing with complaints. These arrangements must however include the appointment of at least one independent person whose views are to be sought and taken into account, before the Council makes a decision on an allegation that it has decided to investigate. The independent person's view may also be sought by the authority at other stages in the investigation and by subject members.
- 3.8 The Council's current Complaints Procedure which is combined with a complaint form, is attached at Appendix 2. This adopts a 3 stage process:-
1. The complaint is sent to the subject councillor member who has an opportunity respond. If the complainant is satisfied with the councillor's explanation or proposed remedy, no further action is taken. If the complainant remains dissatisfied the complaint proceeds to Stage 2.

2. The monitoring officer assesses whether the complaint should be referred for investigation having regard to the referral criteria, in consultation with the chairman of this Committee and an independent person. If a complaint merits investigation it will proceed to Stage 3. If the monitoring officer decides not to refer the complaint for investigation no further action is taken and no appeal is available.
 3. An investigation is carried out and the investigators report is referred to a Hearing Sub-Committee or, in certain cases, this Committee for consideration. The Independent Person's view must be taken into account when deciding what action to take.
- 3.9 Similar arrangements have been adopted by Chiltern District Council. The monitoring officer has received 9 formal complaints under the procedure. The procedure has only proceeded past stage 1 in three cases and only one of these reached stage 3 with a report to the committee in 2014.
- 3.10 Following a decision in 2016 not to refer a complaint about the conduct of a town councillor for investigation, the complainant made a formal complaint to the Local Government Ombudsman. Although the Ombudsman found no fault in the decision not to investigate, fault was found due to the length of time taken to reach the Stage 2 decision at just under a year. Having noted that the Council had already apologised for the delay, the Ombudsman found that the Council had remedied any injustice caused. The delay in question occurred partly as a result of the unavailability of the independent person due to illness and the on-going vacancy for a second independent person at the time. As a result the monitoring officer was unable to progress the Stage 2 requirement to consult and have regard to the independent person's views before deciding whether to refer the complaint for investigation. When these views were obtained the Stage 1 procedure was effectively repeated.
- 3.11 The Ombudsman did not accept that these circumstances were sufficient mitigation for the delay and considered that the monitoring officer had stuck too rigidly to the procedure without considering whether to exercise discretion to find an alternative way to deal with the complaint, by for example dispensing with the requirement to consult the independent person with the agreement of the complainant. Fortunately the Council has now been able to recruit a second independent person and the particular circumstances of this case are very unlikely to recur. However, Members are asked to consider whether some additional flexibility should be built into the current arrangements. The monitoring officer remains of the view that input from an independent person, who has no political connection with the Council, is important before the decision on whether a complaint should be investigated is taken. It is therefore suggested that the monitoring officer pursues the feasibility of calling upon a duly appointed Independent Person from another authority in Buckinghamshire in the event that both the Council's own Independent Persons are unavailable due to illness or a conflict of interest.
- 3.12 The monitoring officer has also reviewed the current complaints procedure in the light of best practice elsewhere and is recommending the following revisions as set out in the draft document at Appendix 3:-

- a. Separating out details of the arrangements adopted from the complaints form. A model complaints form including tick box options is appended at Annex 1 rather than being incorporated into the explanation of the procedure. The model form will be available to download from the Council's website and we will also look into making it available to complete on-line.
- b. The proposed revisions retain the current 3 stage process but also include more detail about how a complaint will be investigated at Stage 3, including the appointment of an investigating officer and the investigation procedure itself. They also explain the procedure that will normally be adopted at meetings of the Hearing Sub-Committee. Whilst the proposed revisions increase the length of the document, the benefit is that all the relevant information for the complainant and subject member are contained in one reference document.
- c. The revised procedure also strengthens the provisions for seeking local resolution of complaints following an investigation. Paragraph 7.1 makes clear, for example, that if an apology is considered an appropriate resolution and the subject member gives such an apology, that no further action would be necessary.

3.13 As referred to above, the failure to declare disclosable pecuniary interests is an offence and under section 34 of the Localism Act is punishable on conviction by a fine of up to £5,000. Complaints that a Member may have failed to declare a DPI are investigated by the Police and not by the monitoring officer. In consultation with the Economic Crime Unit at Thames Valley Police (which deal with this type of offence) and with other monitoring officers in Buckinghamshire, the draft protocol attached at Appendix 3 Annex 7 is recommended for dealing with DPI complaints. To maintain the approach of having all relevant information about the handling of complaints in one place, it is proposed that the final protocol is annexed to the Council's arrangements document. As the draft is still in discussion with other monitoring officers and TVP, Committee is asked to authorise the monitoring officer to agree the final wording in consultation with the Chairman.

4. Consultation

Not applicable at this stage

5. Options

The Council has the option of proposing changes to the code of conduct which should be the subject of wider consultation with members before formal consideration by Full Council and/or alternative revisions to the complaints procedure.

6. Corporate Implications

Financial - None

Legal – As set out in the report

Risks issues – None

Equalities - None

7. Links to Council Policy Objectives

Whilst there is no direct link to the Council's main objectives the Council has a statutory obligation to adopt a code of conduct and complaints procedure. The effective monitoring of complaints is matter of good governance and is important in preserving the confidence of local communities

8. Next Steps

If agreed by the Committee the proposed revisions at Appendix 3 would be recommended to Full Council for adoption.

Background Papers:	None except those referred to in the report
---------------------------	---------------------------------------------