

## **REVIEW OF CODE OF CONDUCT FOR MEMBERS & STANDARDS COMPLAINTS ARRANGEMENTS**

**Officer contact:** Julie Openshaw District Solicitor and Monitoring Officer  
Tel: 01494 425212 Email Julie\_openshaw@wycombe.gov.uk

**Wards affected:** All

### ***PROPOSED RECOMMENDATION***

*That the recommendations in Paragraph 10 (a), (c), (f) and (g) below be adopted by Full Council and that the Head of Democratic Legal and Policy Services in consultation with the District Solicitor be authorised to make all necessary and consequent changes to the Constitution to give effect to this as from the date of adoption by Council.*

### ***Reason for Decision***

To complete the current review of the Member Code and complaints process and make final recommendations to Full Council.

### **Corporate Implications**

1. The Localism Act 2011, Sections 26-37 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the current legislative framework relating to standards of conduct for elected members and arrangements for handling member standards complaints. The Terms of Reference of Standards Committee are set out in the Council's Constitution.

### **Executive Summary**

2. Following earlier reports considered by Standards Committee in June 2015, March 2015 and January 2015, this report continues the Committee's ongoing work to review the Code and complaints process and makes further recommendations as to the way forward and to conclude the current review.

### **Sustainable Community Strategy/Council Priorities - Implications**

3. Continuing to monitor the current arrangement supports the Community Involvement theme of the Sustainable Community Strategy.

### **Background and Issues**

4. Standards Committee has now considered reports on this subject on 6 January 2015, 10 March 2015 and 9 June 2015. On 6 January, it was decided to undertake a review, and that an interim report should be submitted on potential amendments to both the Code and complaints arrangements, including a comparison of arrangements in other parts of the County.
5. A paper was commissioned from Hoey Ainscough Associates, commenting on national and local arrangements, and on 10 March 2015 this was considered. Since the composition of the Standards Committee has since changed, and for Members' convenience, the Hoey Ainscough paper can be found at Appendix B of this report. Whilst this concluded that WDC's arrangements were robust, legally compliant and largely commensurate with best practice and arrangements in other authorities, some relatively minor points were put forward for consideration and possible strengthening

of arrangements. On 9 June, Committee considered those issues, as well as some further suggested amendments made by the previous Standards Chairman.

6. After debate, Standards Committee decided at that stage not to set up a working group to consider further defining and exemplifying behaviour types as acceptable or unacceptable, and as debate highlighted some reservations with some of the suggestions, it was decided to consult widely with Group Leaders, the Independent Persons, and the County and other District Councils in Buckinghamshire on all of the points raised in the report.
7. Accordingly, all the relevant parties were consulted, and responses were requested by 17 July.
8. The seven issues which formed part of the consultation were:
  - (a) Making it compulsory under the Code for Members not only to declare, but also to withdraw from decision making, in circumstances where other “non-DPI” interests exist (so as to make the requirement the same as for where “DPI” – i.e. Disclosable Pecuniary Interests exist);
  - (b) Arranging quarterly meetings for the Monitoring Officer, Independent Persons, and Chairman and Vice-Chairman of Standards Committee to review recent decisions, in order to ensure consistency between cases;
  - (c) Presenting regular quarterly reports to Standards Committee to provide overview information on case numbers and types so as to highlight any emerging trends;
  - (d) Giving further consideration to the specific types of behaviour that are considered should fall foul of the Code, in such a way as to capture them in a clear way which both Members and the public can understand and measure them;
  - (e) Adding a requirement into the second stage of the complaints handling procedure that when the Monitoring Officer and Independent Person are about to consider a complaint, the Chairman and Vice-Chairman will be provided with a copy of the complaint, and will also be informed of the proposed decision of the Monitoring Officer prior to the decision being released to the Complainant and Subject Member (save for cases where the complaint is against one of those Members);
  - (f) Adding into the Code information about the criminal offence and sanctions which the law provides for breaches of the Code centred upon declaration of interests;
  - (g) Whilst noting that there is no longer a legal duty for members to sign a declaration that they agree to abide by the Code which is for the time being in force, for the Council to nonetheless resolve that it expects and encourages all its Members to do so, and will publish a list of Members who have voluntarily agreed to do so.
9. The responses which have been received are summarised in Appendix A.
10. Overall, and taking into account all the comments and the legal framework, the following recommendations are put forward.

- a. Making it compulsory under the Code for Members not only to declare, but also to withdraw from decision making, in circumstances where other “non-DPI” interests exist (so as to make the requirement the same as for where “DPI” – i.e. Disclosable Pecuniary Interests exist);

**RECOMMENDED.**

Reasons: This would bring WDC’s Code into line with other authorities, which was a major reason for its suggestion in the first place, and would remove the propensity for any confusion as to the best and correct way to act when a non-DPI arises. Currently, Members with a non-DPI would still be recommended to not take part in the decision because of the risk of challenge based on perceived bias, but making this obligatory as a Code requirement would reinforce the message and aid consistency.

- b. Arranging quarterly meetings for the Monitoring Officer, Independent Persons, and Chairman and Vice-Chairman of Standards Committee to review recent decisions, in order to ensure consistency between cases;

**NOT RECOMMENDED.**

Reasons: Although this could assist the members in their understanding of consistency, it is difficult to judge consistency, and having any formal arrangement for this, outside Committee itself, could be interpreted as political interference which might undermine confidence in the integrity of the complaints system.

- c. Presenting regular quarterly reports to Standards Committee to provide overview information on case numbers and types so as to highlight any emerging trends;

**RECOMMENDED.**

Reasons: Most if not all Standards Committees have a similar arrangement enabling Committee to publicly examine trends without needing to publicise sensitive case details.

- d. Giving further consideration to the specific types of behaviour that are considered should fall foul of the Code, in such a way as to capture them in a clear way which both Members and the public can understand and measure them;

**RECOMMENDED TO RECONSIDER IN OCTOBER 2016**

Reasons: It is a difficult task to arrive at just the right level of specification of types of acceptable and unacceptable behaviour, and few if any authorities have so far attempted this, particularly taking into account the more broad brush approach which was taken in the replacement of the Standards regime in 2012. Committee on 9 June showed little enthusiasm for setting up a working group for this purpose. However, it may be worthwhile giving this possibility further consideration in the future, and 12 months is suggested.

- e. Adding a requirement into the second stage of the complaints handling procedure that when the Monitoring Officer and Independent Person are about to consider a complaint, the Chairman and Vice-Chairman will be provided with a copy of the complaint, and will also be informed of the proposed decision of the Monitoring

Officer prior to the decision being released to the Complainant and Subject Member (save for cases where the complaint is against one of those Members);

**NOT RECOMMENDED.**

Reasons: As outlined in (b) above, this arrangement might give rise to suspicions of political interference, and even if this was not the case, it could adversely affect confidence in the integrity of the system.

However, and to address both this and (b), it is considered that merely notifying the Chairman and Vice-Chairman of the existence of a complaint, including the parties, and the decision, after the decision is made, would reduce the risk of such interpretation, and would be of assistance to them in their role as they would have additional background knowledge to matters reported more broadly to Standards Committee. In the event that the decision was to investigate a complaint, they would be forewarned that a matter would in due course be reported to the Standards Committee. There would be no process for the Chairman and Vice-Chairman to comment on, be involved in, or support or object to the decision as notification to them would be made after the decision. As such, no change would need to be made to the complaints process to accommodate this and this should strike an appropriate balance between keeping members informed on a need to know basis, yet avoiding allegations of undue influence and any issues which might preclude participation in a future decision.

- f. Adding into the Code information about the criminal offence and sanctions which the law provides for breaches of the Code centred upon declaration of interests;

**RECOMMENDED.**

Reasons: This is not a legal requirement and it would not add or remove any obligation from the Code. However, it would enable readers of the Code, both Members and the general public, to be informed and/or reminded, as part of the Code document itself, of the sanctions for certain actions.

- g. Whilst noting that there is no longer a legal duty for members to sign a declaration that they agree to abide by the Code which is for the time being in force, for the Council to nonetheless resolve that it expects and encourages all its Members to do so, and will publish a list of Members who have voluntarily agreed to do so.

**RECOMMENDED.**

Reasons: Whilst the obligation which existed with the pre-2012 legislation for each Member to sign a written declaration to abide by the Code was abolished by the Localism Act, acknowledging the aim to secure compliance with a Code can be viewed as a public “pledge” to engage in ethical behaviour, and thereby as a personal and corporate encouragement of good conduct. Though this would not necessarily preclude the possibility of unacceptable behaviour, it would be a public acknowledgement of a desire to adhere to good standards of conduct, and could be arranged in a “light touch” way so as to minimise additional administration as intended by the spirit of the Localism Act, such as by members simply confirming by email or otherwise in writing their commitment to abide by the Code, and their website entry confirming whether or not this has been done. Whilst there are arguments both for and against this proposal, on balance this is recommended.

## **Options**

All the proposals in this report are optional and there is no obligation to resolve to take any of them forward; the current Code and process are already lawful. However, those recommended are intended to improve the Council's Member standards and ethics provisions.

## **Next Steps**

Approval by full Council and amendment to the Constitution.

## **Background Papers**

Previous reports to Standards Committee.

## **APPENDIX A**

### **Conservative Group Leader**

No particular comments.

### **Labour Group Leader**

The Labour Group believes that the code of conduct should be clear and unambiguous so that all members know exactly where they stand.

Secondly, it should contain proper guidance as to what constitutes a DPI and what doesn't.

Thirdly, rather than reinventing the wheel we should accept the good guidance available from other councils.

As for the further measures proposed by the previous chairman 9(i) (ii) seem fine, but the wording of number (iii) can be improved and in my opinion the final two lines after the words "do so" should be substituted with and such declarations should be registered, or deleted altogether.<sup>1</sup>

We want a code of conduct which is robust enough to stop unethical behaviour from members so that WDC does not fall into disrepute but on the other hand members deserve to be treated with respect and dignity without questioning their integrity, unless there is evidence of wrongdoing.

### **Independent Group leader**

- (a) should not be compulsory, but on a case by case basis under advice from a legal officer of the Council, as currently happens.

Generally - the Government turned the whole process into something quite toothless; not overly impressed with how we are able to deal with unacceptable behaviour.

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<sup>1</sup> N.B. 9 (i) (ii) and (iii) are referenced 7 (e) (f) and (g) in this report.

### **East Wycombe Independent Group Leader**

Happy with all proposed amendments.

### **Independent Person - Gilbert Houalla**

The proposals are suitable and proportionate.

### **Independent Person - Michael Pearce**

- a) I am in agreement that members should declare and withdraw from decision making from both DPI and non DPIs. From the discussions on Tuesday<sup>2</sup> there seemed to be some confusion among some members concerning non DPI's. I presume the training to be undertaken will clarify this.
- b) Twenty years serving as a Magistrate has taught me that there is no such thing as consistency between cases. Each one has its own characteristics, e.g. circumstances, aggravating and mitigating factors and past behaviour. I believe that this proposal should be dropped.
- c) Quarterly reports to the Standards Committee should only provide details concerning the number of cases and the outcomes.
- d) I think that this is a perfectly reasonable suggestion which I support.
- e) The Chairman and Vice Chairman can have no influence on the Monitoring Officer and the Independent Person's decision. I therefore see no advantage in providing them with information at an early stage.
- f) I am content that this proposal should be added to the Code.
- g) This to me is nonsensical. All members have to abide by the Code of Conduct. To ask them to sign an agreement to comply with something that they have, by law, to agree to is pointless. It also has the potential to be decisive if for some reason some people do not sign. My instinct is that this proposal should not be pursued.

### **Buckinghamshire County Council Monitoring Officer**

There are a number of key differences between our arrangements at the County Council and the proposals at Wycombe. In particular, we don't have a Standards Committee and disciplinary issues are normally dealt with in conjunction with the relevant Group Leader. I have commented below based on our arrangements and hope this is of some use.

- (a) We are currently proposing an amendment to our declaration of interests form to allow for the declaration of non-DPI interests, but making clear this is on a voluntary basis.
- (b) We would find this too frequent in terms of the number of cases we deal with – I will be meeting with the Independent Persons on an annual basis but with a focus on keeping them up to date with developments. We don't have a Standards Committee, but our Regulatory & Audit Committee keeps an overview of policy.

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<sup>2</sup> At Standards Committee in June.

- (c) We present an overview report to our Regulatory & Audit Committee but on an annual basis, which is sufficient for our needs.
- (d) Our Code of Conduct sets out the standards which Members are expected to uphold and this is our benchmark. Group Leaders are expected to play a key role in the discipline of Group Members and any issues are raised with Group Leaders at the earliest possible opportunity.
- (e) In these circumstances, I would advise the relevant Group Leader, rather than a Committee Chairman.
- (f) Our Code explains that non-disclosure of DPI is a criminal offence and could lead to investigation by police and referral to the DPP.
- (g) We will be incorporating this into our revised declaration of interests that each Member is expected to sign. These will be published on our website.

#### **Aylesbury Vale District Council Monitoring Officer**

- (a) That is a very sensible idea where there is a “non-DPI” interest that is “significant” or “prejudicial” depending on which definition you want to go by. In circumstances where someone with full knowledge of the facts would come to the conclusion that the member was not able to act in the public interest they should withdraw.
- (b) It would very much depend on how many cases you have. In any case at AVDC the initial assessment is carried out by the MO, Chair or Vice Chair together with an IP.
- (c) Again very much dependent on the number of complaints you have. I basically just give an update at every Standards Committee on the type of case and a little bit of the background; more of a verbal update, in that way you can discuss more of the case without worrying about the details being put on the net as part of what is a public meeting.
- (d) That really is a point to put more detailed examples of what kind of behaviour is associated with each of the code of conduct headings e.g. Leadership – examples of what would constitute a lack of leadership - bullying and harassment – with examples.
- (e) AVDC already has the requirement that the chair or vice chair are involved at that stage in the decision itself – the decision though is for the MO to make in consultation with the others.
- (f) No observation made.
- (g) It’s probably a good idea as it reminds members of what they are specifically agreeing to so that there are no disagreements. My own view is that they agree to abide by the law and the law says have a code of conduct.

#### **Chiltern District Council Monitoring Officer**

No comment received.

#### **South Bucks District Council Monitoring Officer**

No comment received.