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WYCOMBE
DISTRICT COUNCIL

Queen Victoria Road
High Wycombe
Bucks HP11 1BB

Standards Committee

Date: 9 January 2018
Time: 5.30 pm
Venue: Committee Room 3 - Council Offices
District Council Offices, Queen Victoria Road, High Wycombe Bucks

Membership

Chairman Councillor C Etholen
Vice Chairman Councillor M Clarke

Councillors: K Ahmed, D J Carroll, A R Green, R Newman, S Saddique and J A Savage

Independent Persons: Mr G Houalla

Parish Council Members: Parish Councillors Mr A Cobden, Mr T Nolan and Mrs H Stearn

Standing Deputies Councillors: A D Collingwood, H L McCarthy, R Raja and R J Scott

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Agenda

Item		Page
1	Apologies for Absence To receive any apologies for absence.	-
2	Declarations of Interest To receive any disclosure of any pecuniary interests by Members relating to items on the agenda. If any Member is uncertain as to whether an interest should be disclosed, he or she is asked if	-

Item		Page
	possible, he or she is asked if possible to contact the District Solicitor prior to the meeting.	
	Members are reminded that if they are declaring an interest, they should state the nature of that interest whether or not they are required to withdraw from the meeting.	
3	Minutes of Previous Meeting To confirm the minutes of the previous meeting held on 10 October 2017.	1 - 6
4	Independent Person Recruitment	7 - 21
5	Review of the Member Complaints Procedure	22 - 43
6	Quarterly Complaints Update	44 - 46
7	Supplementary items (If Any) If circulated in accordance with the five clear days' notice provision.	-
8	Urgent Items (If Any) Any urgent items of business as agreed by the Chairman.	-

For further information, please contact Tanya Brown on 01494 421455, committeeservices@wycombe.gov.uk

Standards Committee Minutes

Date: 10 October 2017

Time: 6.15 - 7.00 pm

PRESENT: Councillor M Clarke (in the Chair)

Councillors A R Green, S Saddique, J A Savage, A D Collingwood and H L McCarthy.

Independent Member: Mr M Pearce.

Parish Council Member: Mr A Cobden, Mr T Nolan and Mrs H Stearn.

28 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Etholen, Carroll and Newman.

Apologies for absence were also received from Mr Houalla (Independent Member).

The Vice Chairman, Councillor Clarke, chaired the meeting in the Chairman's absence.

The Acting Chairman thanked everyone for attending the meeting and welcomed the new clerk and the two new Parish Councillor Representatives to their first Standards Committee meeting. All attendees introduced themselves, primarily for the benefit of the new people present.

29 DECLARATIONS OF INTEREST

There were no declarations of interest.

30 MINUTES OF PREVIOUS MEETING

RESOLVED: That the minutes of the meeting held on 11 July 2017 be confirmed as a correct record and signed by the Acting Chairman.

31 SELECTION AND APPOINTMENT OF CO-OPTED MEMBERS OF STANDARDS COMMITTEE

A report was submitted which provided an overview of the selection and appointment of co-opted members on the Standards Committee.

It was reported that there were three co-opted member places (non-voting) on the Standards Committee; at present, only one place was filled, by Parish Cllr Andy Cobden. The Wycombe District Association of Local Councils (WDALC) had previously advanced candidate names to WDC for acceptance after undertaking a

screening process but on this occasion WDALC had been unable to do so. It was noted that following an approach direct to the Clerks, three candidates had applied for the two roles and after interview by the Monitoring Officer and Independent Persons two candidates, Parish Councillor Tim Nolan (Lane End Parish Council) and Parish Councillor Hilda Stearn (Hughenden Parish Council), were recommended to be co-opted onto the Committee.

RESOLVED: That Parish Councillor Tim Nolan (Lane End Parish Council) and Parish Councillor Hilda Stearn (Hughenden Parish Council) be co-opted onto the Standards Committee to fill the two existing vacancies for Parish/Town Council Co-opted members (non-voting).

The Acting Chairman congratulated both successful candidates on their appointments and informed them that the appropriate training would be made available to them in due course.

32 ADOPTION OF GUIDANCE ON USE OF SOCIAL MEDIA BY MEMBERS

A report was submitted which proposed additional written guidance for Members on the use of social media.

It was reported that the current Code of Conduct for Members had been adopted by the Council in July 2012 and reviewed and amended in 2015. Members were informed that in recent years, the general use of social media had become extremely popular and was used by people both in the personal lives and their professional or public capacity. It was noted that the use of social media had significant communication and community benefits if used properly and wisely, but also various risks and disadvantages if used unwisely or without a reasonable understanding of how it operated, or a lack of caution of the way it could be viewed and used by others.

It was noted that whilst training provided to Members on the Code of Conduct had included some broad guidance on the use of social media the guidance now required review and some more detailed written guidance, specific to Members' use of social media, would now be of assistance to Members. The proposed guidance, at Appendix 1, was based upon guidance recently issued by the London Borough of Newham to its elected members and appended to its own Code of Conduct. It was reported that by appending the guidance directly to the Member Code of Conduct, it would be easily available to Members and the public.

Members continued to be very much encouraged to seek specific advice from the Monitoring Officer, Deputy Monitoring Officer, or the Communications team where that was required.

Members were informed that ultimately it was for individual Members to judge whether, and the degree to which, they chose to use social media.

In response to a question it was noted that whilst the Council was unable to take legal action to protect individual Members against issues relating to social media

officers could, if necessary, provide advice and assistance to seek to get inappropriate social media posts removed.

The Acting Chairman added a few points:

- That he personally discouraged the use of social media as he felt it could lead to serious reactions if not used very cautiously.
- That Members should not put anything on social media that they would not be happy to find on the front page of a newspaper (national or local press).
- If dealing with a contentious issue to think very carefully and allow enough time to read and re-read before “pressing the confirmation button”.

It was suggested that in future the guidance on social media be included as part of standards training.

RECOMMENDED TO COUNCIL: That (subject to the first paragraph in the guidelines document being amended to read: “*The Council encourages Members’ use of new technology. This Guidance is intended to help you to use the social media in a way that avoids legal and reputational risk.*”) the Social Media Guidance for Members at Appendix 1 be adopted as an Appendix to the Member Code of Conduct within the Constitution.

33 ADOPTION OF GUIDANCE ON ACCEPTANCE FOR GIFTS AND HOSPITALITY

A report was submitted which provided additional guidance for Members and Officers around the circumstances in which gifts and hospitality might properly be accepted, and when they should be declined.

It was reported that the Code of Conduct for Members which had been adopted by the Council provided that if a gift or hospitality with a value of more than £50 was accepted, then there was an obligation to record this in a register. It was noted that in practice, this forms part of the information which was published as part of Members’ individual profiles within the modern.gov system, and viewable on the Council’s website.

Since 2012, training had been provided to Members on the Code of Conduct including guidance for compliance, as part of induction and ad hoc training. It was noted that so far there had been no specific written guidance on the area of gifts and hospitality, but as other councils across the country had this as part of their Codes, it would support good corporate governance principles for WDC to adopt similar guidance.

Members were informed that supplementary guidance was not obligatory and Members were able to form their own judgments based on the Member Code of Conduct itself, and their individual understanding of the legal requirements and public perception. However, as the Code of Conduct only currently dealt with the requirement to register gifts and hospitality valued at over £50, but did not deal with what considerations should be taken into account in deciding whether or not to accept a gift or hospitality when proffered, whatever its value, the guidance would support members in ensuring that their behaviour complied with the wider requirements of the Code.

A number of examples were given by Members of the Committee as to past gifts and hospitality received. The Acting Chairman stated that if in doubt Members should declare gifts and hospitality received.

In response to questions it was confirmed that the 9 points in Section 5 of the guidance were merely examples of when Members might properly accept gifts and hospitality, and not necessarily exhaustive. It was emphasised that in case of doubt, advice from the Monitoring Officer / Deputy Monitoring Officer should be sought.

It was agreed that an additional bullet point be added to Section 5 of the guidance to read "5.10 If in doubt you should contact the Monitoring Officer / Deputy Monitoring Officer." It was also suggested that Section 5 should read "For clarity, *and whilst not an exhaustive list*, you may accept gifts and hospitality in the following circumstances: 1)....."

RECOMMENDED TO COUNCIL: That *subject to an additional bullet point to be added to Section 5 of the guidance to read "5.10 If in doubt you should contact the Monitoring Officer / Deputy Monitoring Officer." and that Section 5 should read "For clarity, whilst not an exhaustive list, you may accept gifts and hospitality in the following circumstances: 1....."* the Guidance at Appendix 1 be adopted as an Appendix to the Member Code of Conduct.

34 ANNUAL STANDARDS REPORT TO COUNCIL

A report was submitted which recommended that a new annual report be presented to Council setting out the Committee's work over the past year, to strengthen overall governance arrangements.

It was reported that the Accounts and Audit Regulations required preparation of an Annual Governance Statement, underpinned by a Local Code of Governance, setting out Wycombe District Council's corporate governance arrangements, and during the course of work carried out by the Audit Committee on 15 June 2017 to comply with these requirements, in accordance with CIPFA/SOLACE guidance (Delivering Good Governance in Local Government Framework 2016), the Council's Local Code of Governance had been approved.

Members were informed that an Action Plan had also been drawn up following a review of the Council's governance arrangements for 2016/7 which set out a number of areas for proposed improvement. One of the suggested areas was the introduction of an Annual Report from Standards Committee to full Council, to outline the work programme of the Standards Committee in the past year, including training provided, the number of member conduct complaint referrals and outcomes, and any outside assurance in relation to operational processes.

Members were informed that whilst these areas were already covered in the work which was carried out, and the minutes of each meeting were reported to full Council, Standards Committee had not so far prepared an annual report on its work. Doing so would mean that full Council would have the benefit of a composite annual overview of its work.

In response to a question it was confirmed that the annual report would be a public document.

RESOLVED: To approve, within Standards Committee's work programme, the provision of an annual report from Standards Committee to full Council, each Spring, setting out the work of the Committee during the past year.

35 QUARTERLY COMPLAINTS UPDATE

A report was submitted which provided an overview of recent complaint cases regarding Member conduct since July 2017.

It was reported that since the last meeting, at which time two completed complaints had been reported with two remaining partially progressed, four further new complaints had been submitted. Of the total of six, three had since been concluded and could be found in Appendix 1 of the agenda. Of the remaining three, responses had since been received and all were going on to Stage 2. Further progress would be reported at the next meeting.

In response to a question it was noted that there were no recurring themes to the complaints received.

Members were informed that when a complaint was handled at Stage 2 but did not proceed further, both parties receive a detailed decision notice which included an explanation of the process that had been followed. It was suggested that keeping a record of spurious / vexatious complaints could be looked at as part of the review that was about to take place.

It was noted that the continuing small number of complaints suggested that ethical standards continued to be respected by local Councillors.

RESOLVED: That the report be noted.

36 SUPPLEMENTARY ITEMS (IF ANY)

There were no supplementary items.

37 URGENT ITEMS (IF ANY)

There were no urgent items.

38 DATE OF NEXT MEETING

It was noted that the next meeting would take place on Tuesday 9 January 2018 (6.15pm in CR1).

Chairman

The following officers were in attendance at the meeting:

Tanya Brown - Democratic Services Officer
Julie Openshaw - District Solicitor

Agenda Item 4

Standards Committee 9 January 2017

INDEPENDENT PERSON RECRUITMENT AND APPOINTMENT

Officer contact: Julie Openshaw District Solicitor and Monitoring Officer 01494 421252 julie.openshaw@wycombe.gov.uk

Wards affected: All

PROPOSED DECISION

To note the process for recruiting and appointing an Independent Person and to approve the sifting process set out in the report prior to Standards Committee making a recommendation to full Council.

Reason for Decision

The recent death of one of the Independent Persons creates a vacancy which needs to be filled.

Corporate Implications

1. The Localism Act 2011 created a revised method of addressing standards and ethics issues in local authorities. Wycombe District Council has been operating under this regime since it was introduced in July 2012. Section 27 places a duty on the Council to promote and maintain high standards of conduct by members and co-opted members of the Council. Section 28(7) places a duty on the Council to appoint at least one "Independent Person" in connection with its standards duties. In accordance with widespread practice, WDC has decided to have two Independent Persons.
2. Following a transitional period during which two of the former "Independent Members" filled the roles of "Independent Person" ("IP") for the first year of the new regime (as the law permitted), Mr Gilbert Houalla and Mr Michael Pearce were appointed as the Council's two new IPs on 13th May 2013. Mr Houalla continues his role but Mr Pearce's death on 6 December has created a vacancy. The aspects of the role are outlined in this report.
3. IPs need no specific qualifications but the attributes and experience they are expected to possess are set out within the report, together with the grounds which would disqualify an applicant from being appointed. Appointments must be approved by a majority of members of the Council, which in practice means full Council must make the final decision. There is a requirement to advertise the role to invite applications.
4. Many Councils pay a modest allowance to their IPs and some also allow travel expenses. WDC provides an annual allowance of £211.10 which is uplifted to reflect annual inflation, with no separate travel allowance.

Executive Summary

5. This report explains the legal requirements and best practice around recruitment and appointment of Independent Persons and seeks support for the recruitment and appointment process, and confirmation of the term of office of the existing IP.

Sustainable Community Strategy/Council Priorities - Implications

6. Having all Independent Person roles filled supports the Council's priorities in its Corporate Plan by helping to ensure that its business is conducted in accordance with the law and proper standards, and principles of good governance.

Background and Issues

7. WDC has decided to have two Independent Persons, and Mr Gilbert Houalla and Mr Michael Pearce were appointed as the Council's two new IPs on 13th May 2013. Since then they have provided valuable support to the Standards Committee and the Council in general in support of its duty to promote and maintain high standards of conduct and specifically in providing consultative support on Stage 2 member conduct complaints. The recent death of Mr Pearce means that there is now a vacancy in one of the roles.
8. The legislation requires a minimum of one Independent Person to be appointed, but many Councils choose to appoint at least two, in order to provide some resilience, prevent the whole of the necessary support falling to a single person, and allow for the various facets of the role, as outlined below, to be covered. Members may recall that at its meeting on 11 July 2017, when receiving a report on an Independent Person training session which Mr Houalla had recently attended, the ensuing debate included some discussion around what was the "norm" in terms of numbers, and it was noted that a Council can choose to appoint more than two Independent Persons, but so far, two had been considered sufficient to provide the necessary resilience.
9. The role of the IPs was initially twofold, i.e. to provide a view to the Council (in practice to the Monitoring Officer) which must be taken into account before a decision is made on whether or not to formally investigate a complaint that a member has breached the Code of Conduct or in more general circumstances in relation to an allegation, and for members who are the subject of a complaint to be able to contact an IP in relation to an allegation. Since the role was initially enacted, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015, providing that if a Council was considering dismissal of one or more of its statutory officers (Head of Paid Service, Chief Financial Officer, or Monitoring Officer) it would have to set up a panel and at least two IPs would need to be members of such panel. So far there will have been few if any cases across the country where this third aspect of the role will have been required.
10. In 2013, the sifting of applications prior to recommendation of the two candidates to full Council was performed by the Monitoring Officer and recommended candidates reported directly to Council. There is no particular legislative prescription around how the sifting is to be performed. On this occasion, it is suggested that this role be performed by the Monitoring Officer in consultation with the Chairman of Standards Committee. This is consistent with recent practice adopted by some other authorities. The sifting process will depend on

the number of applications and qualification of applicants. If after checking application forms there is at least one applicant who is not disqualified by law from being appointed (disqualification criteria are set out in the Application Pack, at Appendix 1) then individual discussions will be held with each eligible candidate and a report will be presented to Standards Committee at its March meeting to consider a recommendation to be finally approved by full Council.

11. In 2013, no defined term was placed upon the appointments. Some Councils chose to appoint for fixed terms of 5 years to try to minimise any risk that over time it could be perceived that IPs' impartiality might be compromised by an ongoing working relationship with their appointing Council, but some of these have found little option on expiry of the initial 5 years to re-appoint the same people due to difficulties in finding further candidates. There is no obligation to have a fixed term. The 5th anniversary of Mr Houalla's appointment will occur in May 2018. As he has indicated his willingness to extend his term for a further 5 years, the forthcoming report in March will therefore also recommend that full Council re-approve his appointment until at least May 2023.

Options

12. As noted above, the legal minimum number of IPs is one. However, two is the norm, and provides additional resilience. Filling the role with a suitable candidate is recommended.

Next Steps

13. A report will be presented to March Standards Committee containing a progress update, and a recommendation.

Background Papers

None.



RECRUITMENT PACK FOR APPOINTMENT OF INDEPENDENT PERSONS

District Solicitor & Monitoring Officer
Wycombe District Council
Queen Victoria Road
High Wycombe
Buckinghamshire
HP11 1BB

APPOINTMENT OF INDEPENDENT PERSONS

Under Section 27 of the Localism Act 2011, the Council is required to appoint at least one Independent Person to assist the Council in promoting and maintaining high standards of conduct by its elected and co-opted Members and by Town/Parish Councillors within the District. In particular the views of an Independent Person must be sought and taken into account by the Council before it makes its decision on whether a Councillor has breached their respective authority's Code of Conduct following an investigation into a complaint of misconduct. The Independent Person's views may be sought by a Councillor who is the subject of a complaint.

The Independent Persons will also form part of the Council's Panel set up under the Employment Procedure Amendment Regulations 2015 to consider the dismissal of the Council's statutory officers if this function is required.

The Council is currently seeking to recruit one Independent Person and is inviting applications for this position. A fixed annual allowance (currently £211.10, with an annual inflationary uplift) is payable. Training will be provided to the successful applicants.

A person cannot by law be appointed as an Independent Person if they are or were within a period of 5 years prior to the appointment:

- a member, co-opted member or officer of the authority;
- a member, co-opted member or officer of a parish council in the District Council's area; or
- a relative or close friend of the above.

For further details including an information pack and application form, please visit the Council's website: [...link to be included...]

Or email: julie.openshaw@wycombe.gov.uk

If you would like to discuss the role please contact:

Julie Openshaw
District Solicitor & Monitoring Officer
Wycombe District Council
Queen Victoria Road
High Wycombe
Buckinghamshire
HP11 1 BB
Tel: 01494 421252

The closing date for applications is [.....]. Interviews are expected to be scheduled during [.....] 2018.

BACKGROUND INFORMATION

Under the provisions of the Localism Act 2011 the Council is responsible for dealing with complaints about the conduct of its elected and co-opted Members and Town and Parish Councillors in its area.

The Act provides that the Council must appoint at least one Independent Person to assist in discharging these responsibilities. Full details of the role and responsibilities of the Independent Person are included in this Recruitment Pack.

The Council has adopted a formal Complaints Procedure in relation to complaints about the conduct of Wycombe District Council and the Parish Councils within its district, and agreed to appoint two Independent Persons. The view of at least one of them must be sought and taken into account by the Council when deciding whether a complaint of misconduct should be investigated and before it makes its decision on whether a Councillor has breached their respective authority's Code of Conduct following an investigation into a complaint of misconduct. The Independent Person's views may also be sought by a Councillor who is the subject of a complaint.

Independent Persons will also be consulted upon by the Council in respect of applications by Councillors for dispensations to their respective authority's Code of Conduct in accordance with the Council's procedure and scheme of delegated authority regarding the granting of dispensations.

Under the Employment Procedure Amendment Regulations 2015 the Independent Persons will also join the Council's Panel in circumstance where the dismissal of any the Council's statutory officers was being considered, before any recommendation was made to full Council.

The appointment of Independent Persons will be subject to formal approval of the full Council.

Documents

1. Recruitment Pack:
 - Role Description
 - Person Specification
 - Dates of Standards Committee 2018/19
 - Application Form and Declaration (downloadable Microsoft Word version available separately)
2. Wycombe District Council Complaints Procedure (please see separate .pdf document)
3. Application Form and Declaration (please see separate downloadable Microsoft Word version)

ROLE DESCRIPTION: Independent Person

Eligibility for Appointment

A person cannot be appointed as an Independent Person if they are or were within a period of 5 years prior to the appointment:

- a member, co-opted member or officer of the authority;
- a member, co-opted member or officer of a parish council in the District Council's area; or
- a relative or close friend of the above.

Job Purpose

The Council is required to promote and maintain high standards of conduct by its elected and co-opted members and in discharging this duty it must, in particular, adopt a code dealing with the conduct that is expected of those members.

The Council must also have arrangements in place to investigate and make decisions on allegations that members may have failed to comply with the Council's code of conduct. These arrangements also apply to allegations that members of town and parish councils in the District may have failed to comply with the code of conduct adopted by their council.

These arrangements must also include the appointment of at least one independent person whose views are to be sought, and taken into account, before a decision is made on an allegation following a decision to investigate. The views of the independent person may also be sought on other matters and at other stages of the complaints process, by members of the Council whose conduct is the subject of an allegation and by members of Town or Parish Councils in similar circumstances.

Under the Employment Procedure Amendment Regulations 2015 the Council must also invite at least two Independent Persons to join the panel if one needed to be set up to consider the dismissal of any of the Councils statutory officers, namely the Head of Paid Service, Chief Finance Officer and Monitoring Officer.

Role and Abilities

Independent persons should:

- develop and apply knowledge of the Code of Conduct
- develop a clear understanding of the way in which local authorities work
- read reports, briefings and background information in advance of meetings/hearings
- be inquisitive, open-minded and non-judgmental
- be prepared to discuss issues and give views; and
- be committed to a defined term of office.

Key Contacts

These will mainly be the Monitoring/Deputy Monitoring Officer, elected and co-opted members of the District Councils, elected and co-opted members of town and parish councils, and other Independent Persons.

Key Tasks

1. To provide a view on allegations that an elected or co-opted member may have failed to comply with their Council's Code of Conduct when consulted by the Monitoring Officer;
2. To provide a view on the appropriate sanction to be imposed on an elected or co-opted member who may have failed to comply with their Council's Code of Conduct following an investigation by the Monitoring Officer;
3. To receive reports from the Monitoring Officer relating to probity and ethical standards within the Council and Parish/Town Councils in the District, and give views on the implementation of any recommendations;
4. To participate in the Council's Standards Committee meetings as a non-voting member;
5. To participate in any hearings of the Council concerning conduct complaints as required;
6. To be available to provide a view to a member the subject of a complaint;
7. To be a member of any Panel considering the dismissal of any of the Council's statutory officers (which would make a recommendation on this to full Council).

Equal Opportunities

The Independent Person is expected to demonstrate and promote a commitment to the Council's equal opportunities policies.

PERSON SPECIFICATION: Independent Person

	Essential	Desirable
Qualifications: <ul style="list-style-type: none"> No specific qualifications or background is required but a clear commitment to the role and its responsibilities and the time involved in the role is essential 	✓	
Knowledge and Skills: <ul style="list-style-type: none"> A good communicator with questioning skills A good problem solver Assertive Inquisitive, open-minded and non-judgemental Understanding of the local authority standards regime Understanding of the principles behind the Code of Conduct for Members Awareness of the background to the introduction of the ethical framework for local government and the current Localism Act 2011 regime IT skills – word processing software and e-mail 	✓ ✓ ✓ ✓ ✓	✓ ✓
Experience: <ul style="list-style-type: none"> A demonstrable interest in local issues Experience in considering evidence and dealing with ethical issues Experience of providing confidential advice and keeping confidences An interest in public service and local government in particular 	✓ ✓	✓ ✓ ✓
Competencies: <ul style="list-style-type: none"> A person in whose impartiality and integrity member and the public can have confidence Ability to understand and comply with confidentiality requirements Able to make a positive contribution to the work of Standards Committee 	✓ ✓ ✓	
Other Requirements: <ul style="list-style-type: none"> Willingness to agree to observe the Code of Conduct for Members including completing a declaration of Disclosable Pecuniary Interests Able to attend meetings/hearings ad hoc as required within the committee cycle and standards process, and devote preparation time for each meeting Must be of good standing 		

- Must not currently have and must not enter into any contractual relations with the council under which he/she will gain personally
- Will have disclosed to the council any matter in his/her background which, if it became public, might cause the council to reconsider the appointment
- Will not be an active member of any political party or have a public profile in relation to political activities
- Will not have been an officer, elected member or co-opted member of Wycombe District Council or any town or parish council in the District, within 5 years of the date of his/her appointment as Independent Person
- Will not have been a relative or close friend of an officer, elected member or co-opted member of Wycombe District Council or any Town or Parish council in the District, within 5 years of the date of his/her appointment as Independent Person
- Commitment to at least a 5 year term of appointment
- Ideally should have a ICT/internet/telephone facilities at their disposal to assist with carrying out the above functions

You should demonstrate in your application how you meet the above criteria as this will assist the short-listing process.

Means of assessment will be by application form and by interview.

DATES OF STANDARDS COMMITTEE 2018

2018 Standards Committee dates to be confirmed



APPLICATION FOR THE POSITION OF INDEPENDENT PERSON

Individuals who wish to be considered for appointment as an Independent Person are requested to provide the following information to support their application. All information provided will be treated in the strictest confidence and will only be used for the purposes of selection. Please feel free to use a separate continuation page if you wish to expand upon your answer to any question outlined below.

1. PERSONAL DETAILS

Name:

Address:

Postcode:

Daytime Telephone Number:

Email Address:

2. QUALIFICATIONS

(Please list in particular any qualifications which you think are relevant to the position of Independent Person)

3. SUMMARY OF EXPERIENCE

(Please give a brief account of your experience including career, public and voluntary work together with the nature of your current or most recent occupation)

4. RELEVANT EXPERTISE/SKILLS

(Please outline briefly any knowledge or expertise which you believe would be particularly relevant to your role as an Independent Person having regard to the selection criteria and role description)

5. Why do you wish to be considered for appointment as Independent Person and what particular attributes do you believe you would bring to the role?

6. Please provide any additional information you may wish to give in support of your application:

7. Please give the names and contact details of two referees who may be contacted in the event that you are invited for interview:

1) Name:

Address:

Postcode:

Daytime Telephone Number:

2) Name:

Address:

Postcode:

Daytime Telephone Number:

I wish to apply to be an Independent Person. In submitting this application, I declare that:

- I am not and have not during the past five years been a Member, co-opted member or Officer of Wycombe District Council or of any Town or Parish Council in the District
- I am not related to, or a close friend of, any Member, co-opted member or Officer of Wycombe District Council or of any Town or Parish Council in the District
- I am not actively engaged in local party political activity.

Signed:

Date:

Please return this application form by [.....] addressed to:

Julie Openshaw
District Solicitor & Monitoring Officer
Wycombe District Council
Queen Victoria Road
High Wycombe
Buckinghamshire
HP11 1BB

Or email the completed form to julie.openshaw@wycombe.gov.uk

Agenda Item 5

Standards Committee 9 January 2018

REVIEW OF THE MEMBER CONDUCT COMPLAINTS PROCEDURE

Officer contact: Julie Openshaw District Solicitor and Monitoring Officer 01494 421252 julie.openshaw@wycomber.gov.uk

Wards affected: All

PROPOSED DECISION and RECOMMENDATION TO COUNCIL

To consider the report and determine what, if any, changes to the Member Standards Complaints procedure to recommend to Council for approval; recommendations for consideration, and if agreed for approval by Full Council, are set out in Paragraph 11 below.

Reason for Decision

The Member Standards Complaints process has now been in place since July 2012. The Code of Conduct, adopted at the same time, has been reviewed and amended in the meantime. Member comments on the operation of the system in relation to some of the complaints recently submitted under the process suggest that now is a suitable time to review how the complaints process works, and whether any amendments to it should be made.

Corporate Implications

1. The current Member Code of Conduct and Member Conduct Complaints system were adopted with effect from July 2012, to comply with the provisions of the Localism Act 2011. With the abolition of the national Model Code, and Standards for England, formerly known as the Standards Board (which before July 2012 oversaw the administration of complaints), a number of suggested Codes and draft complaints processes that were Localism Act-compliant emerged nationally for Councils to consider for adoption as their models. WDC opted, along with a number of other Councils nationally, for the draft produced by Peter Keith-Lucas, a prominent solicitor and former Monitoring Officer with specialist experience in the area of Member ethics and standards. Any amendments to the complaints system must continue to meet the broad objectives set out in the Localism Act which are outlined in the report.
2. Sections 27 and 28 of the Localism Act 2011 place a duty on the Council to promote and maintain high standards of conduct by its members and co-opted members; in discharging this duty, it must adopt a code dealing with conduct expected of those members when acting in that capacity. The Code must when viewed as a whole must be consistent with the following principles (“the Nolan Principles”):
 - Selflessness;
 - Integrity;
 - Objectivity;

- Accountability;
- Openness;
- Honesty;
- Leadership.

Executive Summary

3. This report outlines the history of the current Code of Conduct and member conduct complaints system, summarises recent member comments on the operation of the system, and invites Standards Committee to review the system and make a recommendation to Council.

Sustainable Community Strategy/Council Priorities - Implications

4. Reviewing the member conduct complaints system helps to promote the Council's commitment in the Corporate Plan (including the emerging refreshed Plan) to ensure its business is conducted in accordance the law and proper standards, and principles of good governance.

Background and Issues

5. The current Member Code of Conduct and Complaints Procedure have been in place since July 2012, when the former Standards regime was abolished, and replacement arrangements were brought into force by the Localism Act 2011. The Council remains under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members and to have a Code of Conduct consistent with the Nolan Principles. Amongst other things, the 2011 Act repealed Section 55 of the Local Government Act 2000 which provided for a statutory Standards Committee.
6. Prior to adoption of the current Code and system, Standards Committee gave extensive consideration at its meetings of 27 March 2012 and 27 June 2012 to the options which were available. On recommendation from Standards Committee, and following consultation with all Group Leaders, full Council chose to retain a voluntary freestanding Standards Committee, and to adopt the Code of Conduct and Complaint process which had been drafted by Peter Keith-Lucas. This option was also selected by a number of other local authorities across the country and the Complaint process is attached at Appendix 1.
7. In short, the current complaints process consists of 3 main stages, preceded by a "pre-Stage 1" stage.
8. At "pre-Stage 1", the Monitoring Officer has discretion to decline to process the application because one or more of the criteria for dismissal is met (see Appendix 1). In practice, this is only invoked rarely. The duty on the Council to promote high standards of conduct, coupled with the need to ensure public confidence in the complaints system, suggests that complaints should be dismissed at the very

outset, and not progressed, only where there is a very clear indication that one of more of the “early dismissal” criteria applies.

9. Stage 1 involves sending the complaint to the Subject Member for information and response, and was introduced to address a general criticism of the previous regime, i.e. that Members were not told of the existence of a complaint against them sufficiently quickly, and they therefore did not have a proper opportunity to consider it early enough, and possibly offer remedial action in order to support a speedy process; moreover, it was possible that they could be embarrassed by learning of a complaint informally before they could be formally notified.
10. Under the current process, where complainants remain dissatisfied with the Stage 1 response, they can request Stage 2 to be invoked. This involves the Monitoring Officer consulting with an Independent Person to decide whether or not the matter should be referred for formal investigation, taking into account the Referral Criteria (see Appendix 1).
11. Stage 3 of the process deals with the setting up of a hearing following investigation. Since at least March 2014, no case has been formally investigated.
12. The following points have been raised for consideration by members. Some points have been grouped together because of similarity and for ease of reference, and addressed together. In each case, explanations are offered in response, together with recommendations for consideration. Appendix 1, which is the current document, also shows the recommended amendments in bold red text.
 1. *The Complainant can be anonymous, in the sense of requesting not to be identified to the Subject Member, which because the Subject Member is known to, and named by the Complainant, can be viewed as unfair.*

Whilst the system allows for the complaint to have their identity withheld from the subject member, this is considered to be proportionate, to allow for the possible situation where an allegation relates to e.g. bullying or harassment. The Complainant’s name and address will have been supplied to the Monitoring Officer so they are not truly anonymous. The Complainant will be advised that although their details are not provided in the first instance, the further a matter was to proceed, the more difficult it would be to maintain anonymity, and a point may be reached where this was no longer possible, in which case if the Complainant insisted on continued anonymity, the impossibility in continuing to maintain it could become a ground for halting the progress of the complaint. Although a complaint need not necessarily be about bullying or harassment for the Complainant to be able to ask to remain anonymous, there is also an assumption that elected Members, on assuming a role in public life, accept an increased susceptibility to complaints and a higher profile role than a member of the public. Where complaints are completely anonymous, the process already provides that they are not taken forward at all.

RECOMMENDATION:

No action required.

2. *Complaints do not receive enough scrutiny at the outset for triviality, nuisance or frivolity. There is currently no facility for the Monitoring Officer to dismiss a complaint at pre-Stage 1 (i.e. before it is accepted as a complaint and sent to the member) where there is some obvious discriminatory motive on the part of a complainant which would be unlawful.*

Complaints already receive scrutiny at the outset, based on the pre-Stage 1 criteria (see Appendix 1). Few cases are rejected at this stage; however, in order to maintain public confidence in the member conduct complaints system, this is to be expected, as it is intended to “weed out” only the most inappropriate or irrelevant complaints, and most complaints clearly meet at least the basic criteria to proceed to Stage 1. The list of pre-Stage 1 criteria adopted by WDC (mirroring that adopted by a number of other Councils) is fairly comprehensive but owing to the lateness of the new legislation being confirmed, may not have been able to have the ideal degree of scrutiny in 2012. With the benefit of operation of the system over the past 5 years, it would be good practice to include an additional category, designed to “weed out” any cases where the complainant’s motive is manifestly and obviously discriminatory.

RECOMMENDATIONS:

- (i) That a new criterion be added to Paragraph 4. “What happens Next?” as follows:

“(h) the subject matter of the complaint reveals any manifest and/or obvious discriminatory motive on the part of the Complainant within the meaning of the Equality Act 2010 in making the complaint”.

- (ii) That criterion (g) in Paragraph 4 be amended to insert the additional wording in italics below, so (g) will read:

“the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation *or service complaint* and there is nothing further to be gained.”

3. *There is no verbal discussion with the member before the complaint becomes formal. Communication with members is very formal, and can come as an unwelcome shock “out of the blue”. Members lack an effective point of contact whom they can contact to find out more about how the process will work. Although it is accepted that the Monitoring Office’s role needs to display impartiality as far as possible once a complaint has been made, and this can preclude detailed discussion with the Monitoring Officer about the facts of the case, it would be useful to have a contact point who is knowledgeable about process, yet not directly involved in it.*

The process is necessarily designed in such a way as to show impartiality between external complainants and elected members by employed officers, as far as is possible with any internal process. Following the change in the law to abolish Standards for England and the general trend under the current legislation to have an internal process, which is as light-touch as possible, it is inevitable that there will be some disagreement from time to time as to where the balance should properly be struck, and the public perception must also be firmly borne in mind. The process requires the member to be immediately informed, in writing, because a key criticism of the pre-2012 process was that early steps in the process could result in it being some time before a member realised that a complaint had been made against them, and they did not always have the opportunity to respond to it swiftly. Contact with both Complainant and Subject Member already outlines the process and gives timescales. Notwithstanding this, it is accepted that the receipt of a complaint can be stressful and worrying for Members. The Monitoring Officer can still be consulted for advice on process, but if Members feel more comfortable consulting an officer not directly involved in the complaints process, but with appropriate knowledge, arrangements can be made for this.

RECOMMENDATION:

That the Head of Democratic Legal and Policy Services nominate a “member contact” officer who has no direct involvement with the complaints process and whom members can contact for support and advice on the process. In the first instance this will probably be the Democratic Services Manager, and the complaints process document be amended to reflect this.

4. *It is impossible to prove a negative.*

This proposition may well be correct, though it may well be a universal issue to all complaints or investigatory processes. The complaints system, by requiring scrutiny by the Monitoring Officer in consultation with an Independent Person, before a matter could proceed to a formal investigation, which is a key stage, means that a considerable bar has to be reached in order to merit an investigation (there have been none since March 2014) and the amount (or lack) of evidence would be a key factor to take into account.

RECOMMENDATION:

No action required.

5. *The 20 working day deadline for members to respond to the initial complaint can give the impression that the reply is expected to take this period to reply, rather than being a longstop date.*

This deadline was presumably intended to allow Members enough time to respond to a complaint, even where they were on holiday, or otherwise busy. It is of course possible for the Subject Member to reply sooner, and this helps move the process forward.

RECOMMENDATION:

That correspondence with Members makes it particularly clear in future that the 20-working day reference is a long stop date, and that they should respond as soon as possible and in any event within 20 working days.

13. As well as points noted by Members, it is also noted that paragraph 9 of the Complaint process still makes reference, when explaining who is an Independent Person, to the transitional provisions up until July 2013, which are now obsolete. It is proposed that this wording be amended accordingly to remove the unnecessary wording, and this is also shown in red bold text.

Options

14. The recommendations set out in the report are not obligatory, and need not be approved; no action, or different action, could instead be taken. However, if any other course of action other than those recommended is desired, it is recommended that the Monitoring Officer be provided with the opportunity to further consider these and present a further report to Standards Committee to allow for further consideration.

Next Steps

15. If Standards Committee agrees, the recommendations will be presented to Full Council for approval, and incorporated into the Member Complaints system and actioned in future complaint cases

Background Papers

None.

Agenda Item 5

B. Arrangements for Dealing with Standards allegations under the Localism Act 2011

1. Context

These Arrangements set out how you may make a complaint that an elected or co-opted member of this Council (or of a Parish Council within its area) has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Code.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the Council (or of a Parish Council within its area), or of a Committee or Sub-Committee of the Council, has failed to comply with the Council's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member (or a member or co-opted member of a Parish Council) against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority's website and on request from Reception or the Complaints Officer at the Council Offices.

Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should ask the parish clerk to provide you with a copy of that Parish's Code of Conduct, or make arrangements to inspect it.

3. Making a complaint

If you wish to make a complaint, please write to:

Complaints Officer
Wycombe District Council
Queen Victoria Road
High Wycombe
Bucks HP11 1BB

Or email: complaints@wycombe.gov.uk, heading your email "Complaint about Councillor(s)"

The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, and is available on request from the Complaints Officer at the Council Offices, as well as the Code of Conduct for the relevant Council.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the

space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

We will acknowledge receipt of your complaint within seven working days of receiving it, and we will keep you informed of the progress of your complaint. Not every complaint that falls under the Code will be referred for investigation. A decision will be made using the referral criteria below.

Complaints should be summarised as much as possible. Any complaints over 20 pages in length may require an extended period of time for consideration by the Monitoring Officer.

4. What happens next?

In certain straightforward circumstances, the Monitoring Officer is entitled to dismiss your complaint at the outset. This will happen if:

- (a) the person you are complaining about is no longer a councillor;
- (b) the conduct you are complaining about happened more than 6 months before you complained;
- (c) the conduct you are complaining about happened in the councillor's private life, not when they were acting as a councillor;
- (d) the complaint is essentially against the action of the council as a whole and cannot properly be directed against individual member(s);
- (e) the complaint is made anonymously;
- (f) there is no prima facie evidence that the Code has been breached or there is not enough information to take the matter further;
- (g) the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation **or service complaint** and there is nothing further to be gained.
- (h) the subject matter of the complaint reveals any manifesto and/or obvious discriminatory motive on the part of the Complainant within the meaning of the Equality Act 2010 in making the complaint.**

If your complaint is not dismissed for any of these reasons, it will then be considered in 3 stages – the aim being to reach a satisfactory resolution.

Under Stages One and Two only the details contained on your complaint form will be considered. Therefore it is very important that you set your complaint out concisely, clearly and provide at the outset all the information you wish to be considered. The information provided should only be relevant to the alleged breaches of the Code, as the Monitoring Officer cannot consider any other subject of complaint. Please identify clearly the paragraphs of the Code you believe may have been breached by the councillor(s) and under each one provide the reason why you believe it has been breached.

The Head of Democratic Legal and Policy Services may nominate a “member contact” officer who has no direct involvement in the complaints process and whom members can contact for support and advice on the process.

5. Stage One

We will tell the Member that you are complaining about that we have received a complaint and provide them with a copy, unless you have completed section 5 of the form requesting confidentiality.

The Member will be invited to respond **as soon as possible but** within **a maximum of** 20 working days, including in his or her response any suggestion to resolve the complaint.

This response will be made available to you and you will be asked if you are satisfied with it, or whether you wish your complaint to be considered further under Stage Two. If you are satisfied with the response, no further action will be taken, or the action proposed by the Member will proceed.

6. Stage Two

Your complaint will then be considered by the Council's Monitoring Officer in consultation with a duly appointed Independent Person whose views will be taken into account. The Monitoring Officer will decide whether your complaint should be referred for investigation. This will normally happen within 20 working days of the date of the commencement of Stage Two.

Where he/she requires additional information in order to come to a decision, he/ she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

Referral Criteria

Whilst each allegation will be considered on its individual merits, the following Referral Criteria will be considered in taking the decision either to accept a complaint for investigation or to take no further action:

- the public benefit in investigating the alleged complaint
- taking into account the nature of the allegation, whether using public funds to examine the matter further would be disproportionate
- whether the information submitted is sufficient to make a decision as to whether to refer for investigation
- whether the complaint is the same or substantially the same as a previous complaint and in that case, whether there is anything further to be gained
- whether the complaint involves conduct too trivial to warrant further action
- whether the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member
- whether the complaint appears to be vexatious, malicious, politically motivated or a 'tit for tat' retaliation or made by a persistent complainant
- whether the matter complained of is an individual act or part of a continuous pattern of behaviour which should be cumulatively considered

- whether any steps have been taken or proposed to remedy the action complained of, for example, an apology has already been made by the member concerned
- the complainant's view of the action taken or proposed.
- where the member or the authority has made a reasonable offer of local resolution, but the complainant is not willing to accept that offer, this may be taken into account in deciding whether the complaint merits formal investigation
- whether the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

After the decision is made by the Monitoring Officer in consultation with an Independent Person, and the parties have been informed, the Monitoring Officer may inform the Chairman and Vice Chairman of the Standards Committee of the existence of the complaint, the parties, and the decision.

7. Stage Three

If the Monitoring Officer decides that a complaint merits formal investigation, he/ she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/ she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/ her with a copy of your complaint, and ask the member to provide his/ her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where the Monitoring Officer and Independent Person consider it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer may delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/ her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

7.1 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned (and to the Parish Council, where your complaint relates to a Parish Councillor), notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/ her report.

7.2 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

(a) Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/ she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/ or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee (and the Parish Council) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

(b) Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as an Appendix to these arrangements.

The Monitoring Officer will conduct a pre-hearing process, requiring the member to give his/ her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/ her report, call such witnesses as he/ she considers necessary and make representations to substantiate his/ her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/ her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/ she considers that he/ she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the

Independent Person, but will then decide what action, if any, to take in respect of the matter.

7.3 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may take the following actions, as it considers appropriate:

District Councillor:

- 7.3.1 Censure or reprimand the member;
- 7.3.2 Publish its findings in respect of the member's conduct;
- 7.3.3 Report its findings to Council for information;
- 7.3.4 Recommend to the member's Group Leader (or in the case of independent members, recommend to Council or to Committees) that he/ she be removed from any or all Committees or Sub-Committees of the Council;
- 7.3.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 7.3.6 Recommend to Council that the member be replaced as Executive Leader;
- 7.3.7 Instruct the Monitoring Officer to arrange training for the member;
- 7.3.8 Remove from all outside appointments to which he/ she has been appointed or nominated by the authority or by the Parish Council;
- 7.3.9 Withdraw facilities provided to the member by the Council, such as a computer, website and/ or email and Internet access; or
- 7.3.10 Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Parish Councillor:

- 7.3.11 Censure or reprimand the member;
- 7.3.12 Publish its findings in respect of the member's conduct;
- 7.3.13 Report its findings to the Parish Council for information;
- 7.3.14 Recommend that the Parish Council arranges training for the member;
- 7.3.15 Recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 7.3.16 Recommend to the Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 7.3.17 Recommend that the Parish Council excludes the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' basic or special responsibility allowances.

7.4 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

8. Who are the Hearings Panel?

The Hearings Panel is a sub-committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Committee, including not more than one member of the authority's Executive and comprising members drawn from at least two different political parties.

The Independent Person is invited to attend all meetings of the Hearings Panel and his or her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

9. Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/ she:

- 9.1 Is, or has been within the past five years, a member, co-opted member or officer of the authority, ~~with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons for the period up to 1st July 2013;~~
- 9.2 Is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority's area, or
- 9.3 Is a relative, or close friend, of a person within paragraph 9.1 or 9.2 above. For this purpose, "relative" means:
 - 9.3.1 Spouse or civil partner;
 - 9.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 9.3.3 Grandparent of the other person;
 - 9.3.4 A lineal descendant of a grandparent of the other person;
 - 9.3.5 A parent, sibling or child of a person within paragraphs 9.3.1 or 9.3.2;
 - 9.3.6 A spouse or civil partner of a person within paragraphs 9.3.3, 9.3.4 or 9.3.5; or

9.3.7 Living with a person within paragraphs 9.3.3, 9.3.4 or 9.3.5 as husband and wife or as if they were civil partners.

10. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/ she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

11. Can I withdraw my complaint?

Complaints can be withdrawn by the complainant by agreement with Monitoring Officer at any stage in the process.

12 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman. Decisions which have been properly made according to the Council's procedure will not be overturned unless the decision making process was faulty. Please note that with regard to actions taken by this Council in respect of alleged breaches of the Code of Conduct, the Ombudsman can only consider complaints made by members of the public or those made on their behalf - this does not include complaints made by town, parish or district councillors.

Appendix - Procedure for Local Standards Hearings

APPENDIX

PROCEDURE FOR LOCAL STANDARDS HEARINGS

1. Interpretation

- (a) "Councillor" means the member of the authority who is the subject of the allegation being considered by the Panel, unless stated otherwise. It also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer and his or her nominated representative).
- (c) "The matter" is the subject matter of the Investigating Officer's report.
- (d) "The Panel" means the Local Standards Hearing Panel which is a Sub Committee of the Council's Standards Committee to which the Standards Committee has delegated the conduct of the hearing.
- (e) "The Committee Support Officer" means an officer of the authority responsible for supporting the Panel's discharge of its functions and recording the decisions of the Panel.
- (f) "Legal Advisor" means the officer responsible for providing legal advice to the Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) "The Chairman" refers to the person presiding at the hearing.
- (h) "The Independent Person" is the person appointed by the Council under Section 28 of the Localism Act 2012, who is invited to attend all meetings of the Hearings Panel and whose views are to be sought, and taken into account, by the Panel before a decision is made on whether the member's conduct amounts to a failure to comply with the Code of Conduct and as to any action to be taken.

2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness, or expediency in circumstances where fairness is not compromised.

3. Representation

The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Standards Committee, another person.

4. Pre-Hearing Process (Local Investigation)

Where the Monitoring Officer has considered the Investigating Officer's report and decided to refer the report to the Hearings Panel the Monitoring Officer shall:

- (a) Arrange a date for the Panel hearing;
- (b) Send a copy of the report to the Councillor, advise the Councillor of his decision to refer the report to the Hearings Panel, and advise the Councillor of the date, time and place for the hearing;
- (c) Send a copy of the report to the Complainant, advise the Complainant of his decision to refer the report to the Hearings Panel, and of the date, time and place for the hearing;

- (d) Notify the Parish or Town Council (as appropriate) of the Panel's initial decision and of the date, time and place of the hearing;
- (e) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Panel will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Panel will need to address, and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All members of the Panel who will conduct the hearing;
 - (ii) The Councillor;
 - (iii) The Complainant and
 - (iv) The Investigating Officer.

Where reasonably practicable, the agenda, Pre-Hearing Summary Report and other documents referred to above will be sent to those persons at least 14 days in advance of the hearing date. Failing this 5 clear days' notice will be given as provided by Access to Information Legislation unless the matter is genuinely urgent and permitted to be notified later under the relevant legislation.

5. **Legal Advice**

The Panel may take advice from its legal advisor at any time during the hearing or while they are deliberating on any aspect of the outcome. The substance of any legal advice given to the Panel should be shared with the member and the Investigating Officer if they are present, whether that advice is given in the hearing room or the separate room where the Panel are deliberating on any aspect of the outcome.

6. **Setting the Scene**

At the start of the hearing, the Chairman shall introduce each of the members of the Panel, the Councillor (if present), the Investigating Officer (if present), the Independent Person and any other officers present, and shall then explain the procedure which the Panel will follow in the conduct of the hearing.

7. **Preliminary Procedural issues**

The Panel shall then deal with the following preliminary' procedural matters in the following order:

(a) **Disclosures of interest**

The Chairman shall ask members of the Panel to disclose the existence and nature of any disclosable pecuniary interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) **Quorum**

The Chairman shall confirm that the Panel is quorate (3 members).

(c) **Hearing procedure**

The Chairman shall confirm that all present know the procedure which the Panel will follow in determining the matter.

(d) Proceeding in the absence of the member

If the Councillor is not present at the start of the hearing:

- (i) The Chairman shall ask the Monitoring Officer whether the Councillor has indicated his/ her intention not to attend the hearing;
- (ii) The Panel shall then consider any reasons which the Councillor has provided for not attending the hearing. If the Panel is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iii) If the Panel is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Panel shall decide whether to consider the matter and make a determination in the absence of the Councillor or to adjourn the hearing to another date. If the Panel decides to proceed in the absence of the Councillor, references in subsequent paragraphs of this Procedure to the Councillor's participation in the hearing shall be construed accordingly.

(e) Exclusion of Press and Public

The Panel may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Councillor (if present) the Investigating Officer (if present) and the legal adviser to the Panel whether they wish to ask the Panel to exclude the Press and public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Panel does not resolve to exclude the press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

8. A failure to comply with the Code of Conduct?

The Panel will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.

- (a) The Chairman shall ask the Councillor to confirm that he/ she maintains the position as set out in the Pre-Hearing summary report.

(b) The Pre-Hearing Summary Report

The Chairman will ask the legal advisor to present his/ her report, highlighting any points of difference in respect of which the Councillor has stated that he/ she disagrees with any finding of fact in the Investigating Officer's report. The Chairman will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points upon which he/ she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Councillor admits that he/ she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Panel may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the

Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).

- (ii) If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/ she did not identify these points as part of the pre-hearing process. He/ she shall then ask the Investigating Officer (if present) whether he/ she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Panel is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigating Officer's report

- (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/ her report, having particular regard to any points of difference identified by the Councillor and why he/ she concluded, on the basis of his/ her findings of fact that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Panel shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Panel shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/ or of the evidence of each witness, the Chairman shall ask the Councillor if there are any matters upon which the Panel should seek the advice of the Investigating Officer or the witness.

(d) The Councillor's response

- (i) The Chairman shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/ or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any matters upon which the Panel should seek the advice of the Councillor or the witness.

(e) **Witnesses**

- (i) The Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that such persons are likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.
- (ii) Any member of the Panel may address questions to the Investigating Officer, to the Councillor or to any witness.

(e) **Additional Evidence**

At the conclusion of the evidence, the Chairman shall check with the members of the Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Panel may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Panel.
- (h) Determination as to whether there has been a failure to comply with the Code of Conduct.
 - (i) At the conclusion of the Councillor's response, the Chairman shall ensure that each member of the Panel is satisfied that he/ she has sufficient information to enable him/ her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.
 - (ii) The Panel shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
 - (iii) The Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) Before taking its decision as to whether there has been a failure to comply with the Code of Conduct, the Panel will seek and take into consideration the views of the Independent Person.
 - (iv) The Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek advice from the Legal Officer and subject to paragraph 5, it may seek such advice whilst in the retirement room. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Panel.
 - (v) At the conclusion of the Panel's consideration, the Panel shall consider whether it is minded to make any recommendations to the authority concerned with a view to promoting high standards of conduct among councillors.
 - (vi) The Panel shall then return to the main hearing room and the Chairman

will state the Panel's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

9. If the Councillor has not failed to follow the Code of Conduct

If the Panel determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) If the Panel apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Panel has just determined), the Chairman shall outline Panel's concerns and state that the Panel has referred this additional or alternative failure to the Monitoring Officer for further consideration.
- (b) The Chairman should then set out any recommendations which the Panel is minded to make to the relevant authority with a view to promoting high standards of conduct among councillors and seek the views of the Councillor, the Investigating Officer and the Legal Advisor before the Panel finalises any such recommendations.
- (c) Finally, the Chairman should ask the Councillor whether or not he/she wishes the authority to publish a statement of its finding.

10. Action consequent upon a failure to comply with the Code of Conduct

- (a) The Chairman shall ask the Investigating Officer (if present, or otherwise the Legal Advisor) whether, in his/ her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Panel should take action if so, what would be the appropriate action that should be taken.
- (b) The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- (c) The Chairman will then ensure that each member of the Panel is satisfied that he/she has sufficient information to enable him/ her to take an informed decision as to what action should be taken.
- (d) Any member of the Panel may address questions to the Investigating Officer or to the Councillor as necessary to enable him/ her to take such an informed decision.
- (e) The Chairman should then set out any recommendations which the Panel is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the Legal Advisor;
- (f) The Panel will then retire to another room to consider in private whether action should be taken and if so, what action should be taken and when that action should take effect; and any recommendations which the Panel will make to the relevant authority.
- (g) The Panel will consult the Independent Person before deciding whether action should be taken and (where action is to be taken) the nature of that action.

- (h) At the completion of their consideration, the Panel will return to the main hearing room and the Chairman shall state the Panel's decisions as to whether action should be taken and (where action is to be taken) the nature of that action, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Panel will make to the relevant authority.

11. The close of the hearing

- (a) The Panel will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Councillor as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Panel's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice, or a summary of that notice.

Agenda Item 6

Standards Committee 9 January 2018

QUARTERLY UPDATE ON STANDARDS COMPLAINTS

Officer contact: Julie Openshaw District Solicitor and Monitoring Officer 01494 421252 julie.openshaw@wycombe.gov.uk

Wards affected: All.

PROPOSED DECISION

To note the report.

Reason for Decision

To provide the Committee with an overview of complaints about member conduct since October 2017.

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 standards complaints. The Member Code of Conduct and complaints procedure are included in Part 5 of the Council's published Constitution.
2. In order to enable Standards Committee to maintain an over view of complaints and any trends emerging, reports will be presented quarterly.

Executive Summary

3. This report provides Standards Committee with an overview of recent Member conduct complaint cases.

Sustainable Community Strategy/Council Priorities - Implications

4. None.

Background and Issues

5. Standards Committee is presented with quarterly updates on member conduct complaints.
6. Since the report to Committee on 10 October 2017, at which time completion of three complaints was reported, with three remaining at Stage 1, those three have all been completed, and one further new complaint have been submitted which is currently at Stage 1. The response from the Subject Member is awaited on this one.

Options

7. None, this report is for noting only.

Conclusions

8. As with recent reports, there continues to be overall a relatively small number of complaints, and so far none have been referred for investigation. The involvement of the view of an Independent Person in each decision, as required by the legal framework, provides a valuable check and balance to the Monitoring Officer to ensure decisions made at Stage 2, i.e. whether or not a formal investigation should be carried out into a complaint, are proportionate and reasonable. The draft Annual Report of Standards Committee to full Council, to be considered at the next Standards Committee meeting in March, will provide a more thorough overview of complaints recently handled.

Next Steps

9. Further quarterly updates will be provided.

Background Papers

None.

Standards Complaints

Complaints submitted under Localism Act procedure:

Ref No	Date Recd	Complainant	Subject Member:	Council	Outcome	Date completed
SC41	11/08/2017	Anonymised	4 Councillors	Wycombe DC	Complaint not referred for investigation. Public benefit not served by further investigation.	02/11/17
SC42	11/08/2017	Anonymised	1 Councillor	Wycombe DC	Complaint not referred for investigation. Public benefit not served by further investigation.	23/10/17
SC43	20/08/2017	Mr I Harrison	Cllr K Wood	Wycombe DC	Complaint not referred for investigation. Public benefit not served by further investigation. Referred to BCC's service complaint process.	30/10/17