

Central
Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



TO ALL MEMBERS OF THE GENERAL PURPOSES COMMITTEE

03 December 2015

Dear Councillor

GENERAL PURPOSES COMMITTEE – Thursday 17 December 2015

Further to the agenda and papers for the above meeting please find attached the following report which was marked to follow:-

10. Annual Report on the Arrangements for Ethical Standards

To consider a report setting out a summary of the Council's ethical governance and arrangements over the last twelve months.

Should you have any queries regarding the above please contact me.

Yours sincerely

Leslie Manning
Committee Services Officer

email: leslie.manning@centralbedfordshire.gov.uk
telephone: 0300 300 5132

This page is intentionally left blank

Central Bedfordshire Council

GENERAL PURPOSES COMMITTEE

17 December 2015

ANNUAL REPORT ON THE ARRANGEMENTS FOR ETHICAL STANDARDS

Advising Officer: Quentin Baker, Assistant Director Legal and Democratic Services (interim) and Monitoring Officer
(quentin.baker@centralbedfordshire.gov.uk)

Contact Officer: Maria Damigos, Corporate Lawyer
(maria.damigos@centralbedfordshire.gov.uk)

Purpose of this report

1. To provide the Committee with a summary of the Council's ethical governance and arrangements over the last 12 months.

RECOMMENDATIONS

The Committee is asked to:

1. Note how the Council has complied with its obligations in respect of ethical standards under the Localism Act 2011 for the year since July 2014;
2. Resolve that F2 paragraph 12 of the Constitution in relation to appeals from the Standards Sub-Committee under the Arrangements for Dealing with Standards Allegations under the Localism Act 2011 is deleted.

Overview and Scrutiny Comments/Recommendations

1. This Report is an update on ethical standards to General Purposes Committee. No decision by the Executive or Council is required.

Introduction

2. The Localism Act 2011 introduced revised arrangements for local authorities in respect of ethical standards, including the Code of Conduct, Register of Interests and the handling of complaints. This Council's obligations under the Act included certain responsibilities regarding the Register of Interests and the conduct of complaints relating to T&PCs.

3. The Council adopted a new Code of Conduct at its Annual Meeting in April 2012. The relevant provisions in the Localism Act 2011 came into force on 1 July 2012 and in accordance with those provisions the Council subsequently approved the matters that should be included in the Register of Interests and appointed a panel of Independent Persons to provide views on complaints. During the year 2013/14 the Council received an unusually large amount of complaints within a very short time frame and introduced new procedures and the arrangements for dealing with ethical standards within the constitution was reviewed and amended.

The Code of Conduct

4. The Code of Conduct adopted by the Council has also been adopted by most T&PCs in the area. However, it is open to each Council to adopt its own code and so there is not a single code of conduct that covers all councils in Central Bedfordshire. A number of T&PCs have adopted the model Code of Conduct circulated by the National Association of Local Councils (NALC). It is important therefore for Members to be clear which Code they are working to, and for the Code to be easily accessible to members of the public e.g. published on Councils' websites.
5. In practice, the Code seems to provide a sound framework for issues regarding the conduct of Members. However an ongoing issue and area of debate is the sanctions available to the Standards Sub Committee in the event of a breach of the Code. Where there is a serious breach or persistent breaches of the Code there is no ability to suspend a Member from public office or attendance at public meetings. A list of sanctions is found at paragraph 11 of Appendix A attached.

The Register of Interests

6. The Council decided to confine the items that must be included in the Register of Interests to those disclosable pecuniary interests that were prescribed by the government in Regulations. However, the Council also adopted the following general obligation: As an over-riding obligation, Members are required to abide by the law and the Nolan Committee Seven Principles of Public Life in determining whether any additional interests should be disclosed.
7. All councillors are under an obligation to notify the Monitoring Officer of any disclosable pecuniary interests they have within 28 days of their election to the Council. In August 2012, the Secretary of State issued guidance for councillors entitled: Openness and transparency on personal interests. In this guidance, the Secretary of State emphasised that under the principle of honesty holders of public office have a duty to declare any private interests relating to their public duties and that this is an ongoing obligation during a Member's term of office.

8. After the May Election all Members were asked to submit a fresh register of interests forms. Members are responsible for updating their register within 28 days of any change in their interests. Failure to disclose a pecuniary interest is a potential criminal offence. All Council members have disclosed their pecuniary interests. One member does need to update their interests and assistance with this is required and is being arranged.
9. This Council's Monitoring Officer is responsible under the Act for ensuring that the registers of interest for all the T&PCs in the area are published on the Council's website and are available for inspection. Currently the Council has been informed of 644 Town and Parish Councillors (this figure includes notification of co-opted councillors) and as at mid September 2015 the Monitoring Officer has received 579 completed forms which is a 90% return. Some of the returned forms have been queried and further contact and chasing will be carried out for the outstanding forms.

Independent Persons

10. The Council worked in collaboration with Bedford, Luton and Milton Keynes Councils and the Bedfordshire and Luton Fire & Rescue Service and the Buckinghamshire and Milton Keynes Fire Authority to establish a joint panel of Independent Persons. This arrangement continues to work well providing an effective backstop and reality check for the Monitoring Officer as part of the initial assessment and investigations stages of the procedures.
11. The Act provides that each Council must appoint at least one Independent Person whose views are to be sought and taken into account before the Council makes a decision following the investigation of a complaint that a Member of the Council or a Town or Parish Councillor has failed to comply with the Code of Conduct. The Council normally also consults an Independent Person when making a decision on how to progress a complaint which comes under the Code of Conduct. A minimal fee and reasonable expenses are provided to an Independent Person per case and all Independent Persons are held on the Panel by way of retainer, the cost of which is shared across the Authorities.

Complaints

12. A copy of the procedure that the Council has adopted for handling complaints is attached as Appendix A.
13. The procedure provides that where the conduct complained of comes under the Code of Conduct, the Monitoring Officer will carry out an initial assessment of the complaint, in consultation with an Independent Person to decide whether there is a potential breach of the Code of

Conduct and accordingly to take (i) no further action, (ii) recommend a local resolution, or (iii) proceed to a formal investigation. If a formal investigation is required, interviews will be conducted by an investigating officer and the views of the Independent Person sought. A report is then produced for the Monitoring Officer to make a final decision or refer to the Standards Sub Committee. At any point the Monitoring Officer can ask for a review of the complaint by the Standards Sub-Committee or (after investigation) a hearing to determine the facts and, if appropriate, sanction the Member. Current resources to administer this work are the Monitoring Officer's time, support from the Corporate Lawyer (0.8FTE), a locum Corporate Lawyer (0.4FTE) and assistance from the Committee Services Manager. During the past year 2 cases have been investigated by external solicitors (at a cost of approximately £10k) and 10 complaints were reviewed by external solicitors (at a cost of approximately £8k).

14. Since August 2014 to September 2015 there have been 33 complaints received with 42 complaints being carried over from 2013/14 making a total of 75 complaints being dealt with in the 12 month period to September 2015. The complaints received are spread across 13 Town and Parish Councils and Central Bedfordshire Council. In this 12 month period 8 of the complaints received were against CBC councillors. 66 complaints had been closed leaving 9 open matters as at the end of August 2015.
15. As at November 2015 there are 6 open matters: one matter is at initial assessment stage, an investigation report will be submitted to the Monitoring Officer in respect of 4 complaints and the last complaint is awaiting local resolution. Appendix B shows the cumulative totals of complaints received since June 2012.
16. There have been delays in the historic complaints inherited by the previous Monitoring Officer, and these have in part been addressed with implementation of a new tracking system, and subsequent appointment of the Corporate Lawyer to assist with this work. A year by year comparison shows that more complaints have been dealt with this year but the changes to the end to end procedures both via the Constitution as detailed below and day to day working have resulted in a more efficient process with better management of the expectations of complainants.

Training

17. The complaints received have shown where training and guidance is most needed for Town and Parish Councillors and this is to be facilitated in conjunction with NALC and the Clerks to the T&PCs.
18. Since August 2014 there has been ongoing liaison with the Clerks which has seen an increase in the queries received to assist with matters being dealt with before they become complaints.

19. A briefing session for Clerks was held in March 2015. After the election further information was available for CBC councillors at induction sessions and a tailored ethics presentation. A briefing session on ethical governance was also held in July 2015. A session on social media is currently being planned. All briefing sessions were well attended and well received and interest has already been shown in respect of the social media briefing.
20. In light of the increased volumes in complaints the previous Monitoring Officer worked with her team to revise the process so that it is a better fit for purpose to cope with the volume and complexity of complaints going forward and manage expectations of those complaining by including details about threshold criteria. These changes were approved by Council on 29 January 2015 after a recommendation to do so by General Purposes Committee and the Constitution was subsequently amended. The complaint form and website were also updated to provide further information. New standard letters were drafted to ensure all parties are fully aware of the procedure. A workflow is ready to have live testing on new complaints to help further streamline the procedure and create further efficiencies.
21. In conjunction with the Clerks, the previous Monitoring Officer started to encourage T&PCs to resolve more minor matters at a local level themselves (wherever possible) so that only the more serious potential breaches of the Code would be considered for investigation. This is continuing and has resulted in an increase in guidance being provided to both councillors and Clerks and less formal complaints being received.
22. Going forward, officers of this Council will continue to work with the T&PCs to encourage best practice in use of their procedures and standing orders, as well as liaising with NALC and the Council's Partnership Team to facilitate further training and development opportunities for all Councillors.

Appeals from the Standards Sub-Committee

23. The current provisions regarding the process by which allegations are dealt with includes a right of appeal from a hearing on limited grounds by either the complainant(s) or the subject member. On reviewing practice in other authorities it is noted that procedures in some other authorities don't include an appeal stage. It is noted that the procedure includes the involvement and input from an independent person and it is suggested that this provides an important safeguard and ensures that the process is fair.
24. It is suggested that there is sufficient protection of rights in a hearing of the Standards Sub-Committee which will be dealt with by at least three impartial members with wide discretion to question and request

information. The Standards Sub-Committee will also be able to consult with the Independent Person who considered the matter.

25. There is a cost implication associated with the appeal process as it involves officer and member time and that of the independent person. With these safeguards in place it may be felt that this be a disproportionate use of the Council's resources bearing in mind that there are limited grounds of appeal and bearing in mind that the sanctions which could be imposed are limited. There has been one hearing of the Standards Sub-Committee which was heard by 5 members and then appealed. As well as Monitoring Officer and Members time, the appeal resulted in approximately 65 hours of officer time with no change to the result.

Council Priorities

26. The effectiveness of the Council's governance arrangements contributes to the achievement of all the Council's priorities.

Corporate Implications

Risk Management

27. It is important that the Council has in place an effective local framework to secure high ethical standards in the conduct of its business. The main risk to the Council of a failure in the area of ethical standards is reputational.

Staffing (including Trades Unions)

28. There are no specific staffing issues arising from this report, however members are reminded that the Councillor Code of Conduct is complemented by the Protocol for Member/Officer Relations.

Legal Implications

29. Under the Localism Act 2011, the Council introduced, as required, revised arrangements governing ethical standards, including a Code of Conduct, arrangements for handling complaints and the establishment of a Register of Members Interests. The Council also has responsibility for overseeing the arrangements that are adopted by Town and Parish Councils (T&PCs) and for investigating Code of Conduct complaints made against Town and Parish Councillors. However the Monitoring Officer as at September 2015 also found that she was regularly requested by the T&PCs to advise on a range of legal and/or procedural queries that are unrelated to the Code of Conduct and therefore fall outside of this Council's responsibility. As these are matters for the T&PCs to deal with themselves, the Monitoring Officer liaised with the Clerks to identify appropriate alternative sources of advice and assistance for them to consider.

Financial Implications

30. The proposals contained in this report have no specific financial implications. However Members are advised that there are limited resources available for this work and therefore there is a need to use resources within Legal and Democratic Services as efficiently as possible when dealing with ethical matters to minimise costs.

Equalities Implications

31. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These requirements are recognised in the accountability principle of public life which forms part of the Members Code of Conduct.

Conclusion and next Steps

32. The figures show that the number of complaints being dealt with is increasing overall but as the total complaints open at the end of each month has significantly reduced it can also be seen that the processes in place are working well. The removal of the right of appeal will not prejudice subject members but will reduce the time for the end to end process as well as ensuring Council resources are more effectively targeted.

Appendices

The following Appendices are attached:

Appendix A – Section F2 of Constitution – Arrangements for dealing with Standards Allegations under the Localism Act 2011

Appendix B – Cumulative total of Councillor Code of Conduct Complaints

This page is intentionally left blank

**F2 ARRANGEMENTS FOR DEALING WITH STANDARDS
ALLEGATIONS UNDER THE LOCALISM ACT 2011**

1. Context

These “Arrangements” are made in accordance with section 28 (6) and (7) of the Localism Act 2011. They set out how to 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 relevant authority’s Code of Conduct. They also set out how the Council will deal with any complaints about such failures.

2. The Code of Conduct

Central Bedfordshire Council has adopted a Code of Conduct for Members, and this Code is available for inspection on the Council’s website or on request from the Monitoring Officer at Priory House, Chicksands.

Each town and parish council in the area is also required to adopt a Code of Conduct. Copies of these Codes are available on the relevant council’s website or on request from the town or parish clerk.

3. The Independent Person

The Council is required to appoint at least one independent person. The Council must consult an independent person and take his/her views into account before making a decision on a complaint that it has investigated.

The independent person may be consulted by the Council at various stages in the complaints process and can also be consulted by a Member who is the subject of a complaint.

4. Making a complaint

A complaint that a member of Central Bedfordshire Council or of a town or parish council in the District has failed to observe the Council’s Code of conduct should be submitted to:

The Monitoring Officer
Central Bedfordshire Council
Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the arrangements for complaints about Member misconduct.

In order to ensure that the Monitoring Officer has all the information needed to process complaints, they should be submitted using the model complaint form which also explains the process and the relevant referral criteria at initial assessment. The complaint form can be downloaded from the Council's website. A copy of the form is also available on request from the Monitoring Officer.

Complainants must provide their name, postal address and, where possible, their email address. The Council will not normally investigate an anonymous complaint, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of the complaint and will notify the Member against whom the complaint is directed by providing a copy of the complaint to them within 5 working days of receiving it, and will keep both the complainant and the Member informed about the progress of the complaint.

5. Initial Assessment

The Monitoring Officer will assess every Councillor Code of Conduct complaint received and, after consultation with the Independent Person, will take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of a complaint but may take longer if additional information is sought.

Whilst each allegation will be considered on its individual merits, the following "Referral Criteria" will be used at the initial assessment to decide whether to accept a complaint for investigation, take no further action or to decide upon some form of local resolution.

Referral Criteria

The matters detailed below will be considered.

- Is the subject Member still a serving Member?
- Is the information submitted sufficient on which to make a decision?
- Is the complaint the same as or similar to a previous complaint?
- the complainant's view of the action which is proposed or has been taken
- the steps already taken or proposed to remedy the action complained of
- complaints about a Council member by a member of the same Council will not normally be referred until the Monitoring Officer considers that other processes such as informal, political group or Chairman mediation have taken place
- the time passed since the alleged conduct occurred
- whether the complaint involves conduct too trivial to warrant further action
- whether the complaint appears to be malicious, politically motivated or tit for tat
- whether the matter complained of is an individual act or part of a continuous pattern of behaviour which should be cumulatively considered
- the public benefit in investigating the alleged complaint
- the availability and cost of resources balanced with the seriousness of the alleged matter
- Any complaint made by an officer about a Council member will normally only be referred for investigation after the protocol for Member/Officer Relations has been pursued.
- any other substantial reason.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may ask the complainant to provide further information, and may also request information from the Member against whom the complaint is directed.

Where the complaint relates to a parish councillor, the Monitoring Officer may also inform the Parish Council about the complaint.

6. Informal Resolution

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, for example, the Member accepting that his/her conduct was unacceptable and offering an apology, or other appropriate remedial action. Where the member or the authority makes a reasonable offer of informal resolution, but the complainant is unwilling to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

7. Investigation

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another 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 the complainant to understand the nature of the complaint, to obtain an understanding of events, to identify what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

The Investigating Officer will normally contact the Member against whom the complaint has been made to provide him/her with a copy of the complaint and to obtain the member's explanation of events. The Member will be invited to identify what documents the Investigating Officer needs to see and who he/she needs to interview.

In exceptional cases, where it is appropriate to keep the complainant's identity confidential or where disclosure of the details of the complaint to the member might prejudice the investigation, the Monitoring Officer may redact the complainant's name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

At any point, the Investigating Officer may refer the complaint to the Monitoring Officer to resolve it without a full investigation or to reject it.

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 the complainant and to the Member concerned, to give them both an opportunity to identify any matter in the report with which they disagree or which requires more consideration.

Having received and taken account of any comments made on the draft report, the Investigating Officer will submit his/her final report to the Monitoring Officer.

The Monitoring Officer will review the Investigating Officer's report and will decide what action to take. There are three possible courses of action:

- **No action**
- **Local Resolution**
- **Hearing**

8. No Action

If the Investigating Officer concludes that there has been no breach and the Monitoring Officer is satisfied that this conclusion is sound, then he/she may decide that no further action should be taken in relation to the complaint. If the Monitoring Officer is not so satisfied, then his/her decision will be final.

9. Local Resolution

If the Investigating Officer concludes that there has been a breach of the Council's Code of Conduct, the Monitoring Officer may, after consulting the Independent Person, seek a local resolution of the complaint.

A local resolution may include the Member acknowledging that his/her conduct was unacceptable and offering an apology and or accepting other remedial action by the Council.

If the Member and the complainant agree to accept the suggested resolution, the Monitoring Officer will report the matter to the Standards Sub-Committee (and the Parish Council) for information, but will take no further action. Neither the Member nor the complainant has the right to reject the Monitoring Officer's suggested resolution and any non-acceptance by either will be reported to the Standards Sub-Committee.

10. Hearings

If the Monitoring Officer considers that 'local resolution' or 'no action' is not appropriate or adequate, then the Monitoring Officer will submit the Investigating Officer's report to the Standards Sub-Committee which will conduct a hearing into the complaint 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 matter.

Following the hearing, the Standards Sub-Committee, 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 will dismiss the complaint.

If the Standards Sub-Committee concludes that the Member has failed to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Sub-Committee will then consider what action, if any, should be taken as a result of the Member's failure to comply with the Code.

Before reaching a decision, the Standards Sub-Committee will give the Member an opportunity to make representations and will consult the Independent Person.

11. Sanctions

The Council has delegated to the Standards Sub-Committee authority to take such action in respect of individual Members as may be available to promote and maintain high standards of conduct. Accordingly the Sub-Committee may –

- 11.1 censure the Member;
- 11.2 publish its findings in respect of the Member's conduct;
- 11.3 report its findings to the Council (or to the Parish Council) for information;
- 11.4 instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- 11.5 inform the Member's Group Leader

The Standards Sub-Committee has no power to suspend or disqualify the Member or to withdraw any special responsibility allowances to which the Member may be entitled under the Council's Members' Allowances Scheme.

The Independent Person is invited to attend all meetings of the Standards Sub-Committee and his/her views will be sought and taken into consideration before the Sub-Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and also as to any action to be taken following a finding of failure to comply with the Code of Conduct.

12. Appeal

If either the complainant or the Member against whom a complaint has been made is dissatisfied with the outcome, he/she may ask for the decision to be appealed. Any appeal will be undertaken by the Standards Appeals Sub-Committee made up of Members who have not previously been involved in the consideration of the complaint.

Any appeal request must be received in writing by the Monitoring Officer within 21 days of issue of the written decision notice and only on the grounds of:

- the procedure having been wrongly applied
- new evidence having come to light since the hearing
- a misdirection in law.

The appeal hearing will be restricted to consideration of the papers. An Independent Person who has not previously been consulted will be asked to give their view.

The Standards Sub-Committee may:

- set aside the original decision if it considers it to be unreasonable and substitute its own decision
- confirm the original decision.

There will be no further right of appeal.

13. Revision of these arrangements

The Council has delegated its responsibilities under Chapter 7 of the Localism Act 2011 to the General Purposes Committee. The General Purposes Committee may therefore amend these arrangements. The General Purposes Committee resolved on 17 July 2014 that authority be delegated to the Monitoring Officer, in consultation with the Chairman of the General Purposes Committee, to amend the arrangements for dealing with Standards allegations made under the Localism Act 2011.

This page is intentionally left blank

Appendix B

Councillor Code of Conduct Complaints Cumulative Summary

Month	Cases Opened in Month	Cases closed in Month	Number of active cases at end of Month
June 12	4	-	4
July 12	1	-	5
August 12	3	-	8
September 12	1	-	9
October 12	-	-	9
November 12	2	1	10
December 12	-	-	10
January 13	2	-	12
February 13	-	-	12
March 13	-	-	12
April 13	8	-	20
May 13	3	-	23
June 13	3	-	26
July 13	2	-	28
August 13	-	-	28
September 13	-	-	28
October 13	2	-	30
November 13	1	14	17
December 13	5	-	22
January 14	-	-	22
February 14	-	-	22
March 14	1	1	22
April 14	11	-	33
May 14	6	6	33
June 14	7	1	39
July 14	9	6	42
August 14	3	8	37
September 14	2 (1 new + 1 review)	10	29
October 14	5	7	27
November 14	4	1	30
December 14	2	14	18
January 15	1	4	15
February 15	4	3	16
March 15	3	3	16
April 15	1	9	8
May 15	3	1	10
June 15	-	1	9
July 15	2	3	8
August 15	4	3	9
September 15	1	4	6
October 15	4	4	6
November 15 (23rd)	1	1	6

This page is intentionally left blank