

Title of Report:	Monitoring Officer's Quarterly Update Report to the Standards Committee – Quarter 3 of 2013/14
Report to be considered by:	Standards Committee
Date of Meeting:	13 January 2014
Forward Plan Ref:	SC2693

Purpose of Report: To provide an update on local and national issues relating to ethical standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.

Recommended Action: To note the report.

Reason for decision to be taken: The Standards Committee is responsible for ensuring that District and Town/Parish Councillors in West Berkshire are aware of the standards of conduct expected of them and that they observe those standards.

Other options considered: None

Key background documentation:

- Localism Act 2011
- Reports to Council 10 May 2012 and Special Council on the 16 July 2012
- New Terms of Reference for the Standards Committee and Advisory Panel;
- A new Code of Conduct for West Berkshire District Councillors (Full Council December 2013).

The proposals will also help achieve the following Council Strategy principle:

☒ **CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

Good governance arrangements are fundamental to the well being of the Council

Member Details	
Name & Telephone No.:	Councillor Peter Argyle
E-mail Address:	pargyle@westberks.gov.uk
Date Member agreed report:	Emailed to Councillor Argyle on 24 December 2013

Contact Officer Details	
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Implications

Policy:	Revised policy and changes to processes adopted at Council in May 2012 and December 2013
Financial:	There are no financial issues arising from this report. All costs associated with the investigation of complaints are met from within existing budgets.
Personnel:	There are no personnel issues associated with this report
Legal/Procurement:	There are no legal issues arising from this report, The matters covered by this report are generally requirements of the Localism Act 2011 and regulations made under it.
Property:	None
Risk Management:	The benefits of this process are the maintenance of the Council's credibility and good governance by ensuring a high standard of ethical behaviour. The threats are the loss of credibility of the Council if standards fall.

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?	<input type="checkbox"/>		X
• Is it a major policy, significantly affecting how functions are delivered?	<input type="checkbox"/>		<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?	<input type="checkbox"/>		<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?	<input type="checkbox"/>		<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Executive Report

1. Introduction

- 1.1 The Localism Act 2011 was enacted on 15th November 2011 and it made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils.
- 1.2 In order to ensure that the process is working effectively it was agreed that the Monitoring Officer would make a quarterly report to Standards Committee which sets out the number and nature of complaints received and draw the Committee's attention to areas where training or other action might avoid further complaints in the future. It also provides a means of updating the Committee on the progress of investigations together with any costs incurred and other activity that has taken place which may impact on the Standards Committee.

2. The Standards Regime

- 2.1 The Council adopted a new Standards Regime to implement the requirements of the Localism Act 2011 and the Regulations made under that Act. This included the following documents which were approved at Full Council on the 10 May 2012:

- New Terms of Reference for the Standards Committee and Advisory Panel;
- A new Code of Conduct for West Berkshire District Councillors;
- New outline complaints procedures for breaches of that code;
- A new dispensations procedure.

- 2.2 At the time the new Code was adopted it was agreed that the Code of Conduct would be reviewed a year after its inception. A small task group was set up in the summer of 2013 to consider the Council's existing Code and to suggest amendments in line with good practice. The Task Group comprised Councillors David Allen and Peter Argyle, James Rees (Independent Person) and Tony Renouf (Parish Councillor). The Task Group concluded that overall the revised Code and underpinning processes had worked well. Therefore only a number of minor amendments to the existing Code of Conduct were suggested. These included:

- a) The scope of when the code was applicable should be reviewed and if appropriate clarified;
- b) Footnotes pertaining to the Bribery Act 2010 and the Local Authority Code of Publicity should be inserted;
- c) The terms 'you must' and 'you must not' to be inserted into the Code relating to the obligations of Members;
- d) The level at which gifts and hospitality should be declared to be reviewed and if appropriate amended.

- 2.3 The following amendments to the existing procedures were also proposed by the Task Group:

- a) In future there would be an assumption that hearings should take place in public, in reality Members would be asked to vote on whether to go into Part II or not after hearing representations from the subject member or complainant;
- b) The flowchart to be amended to allow the Advisory Panel to refer an investigation back to the investigator if appropriate; and
- c) The flowchart to be amended to include naming the meeting between the Monitoring Officer and the Independent Person as the 'Individual Assessment Meeting'.

2.4 The Standards Committee met on the 14 October 2013 to consider the Task Group's proposals and agreed to make the following recommendations to Council.

- a) that the scope of when the Code was applicable should be amended as set out in the revised document;
- b) the insertion of the footnotes relating to the Bribery Act 2010 and the Local Authority Code of Publicity should be retained;
- c) the layout using the terms 'you must' and 'must not' clarified the document;
- d) the level at which Members should declare the receipt of a gift or hospitality should remain at £25.00 and that mention be inserted of 'serial givers';
- e) the typographical error on page 24 to be amended with the word 'vacation' being replaced by 'vocation' notwithstanding that this is contained in the Regulations;
- f) the suggested amendments to the flowchart be accepted.

2.5 At the July Standards Committee meeting it was also suggested that it would be useful for the Council to produce a Social Media Protocol for Members. A draft protocol was discussed at the 14 October 2013 Standards Committee meeting and was referred to Full Council in December 2013 for adoption.

2.6 Following the adoption of the revised Code of Conduct and the Social Media Protocol by the December 2013 Council meeting copies of the documents have been sent to all parish and town councils should they wish to adopt or amend their existing documents.

3. Membership

3.1 At the Council meeting on the 27 September 2012 Mr James Rees and Mr John Bingham were appointed as Independent Persons in accordance with Section 28 of the Localism Act 2011.

3.2 The following Members have been appointed to the Standards Committee:

- Peter Argyle; (Chairman)
- Adrian Edwards;

- Virginia von Celsing;
- Garth Simpson;
- Mollie Lock;
- Gwen Mason (Vice Chairman)
- Barry Dickens (co-opted non-voting Parish Councillor)
- Chris Bridges (co-opted non-voting Parish Councillor)

3.3 The following Councillors have been appointed to the Advisory Panel:

- Quentin Webb;
- Andrew Rowles;
- Geoff Mayes;
- David Allen;
- Tony Renouf (Parish Council Representative);
- Peter Iveson (Parish Council Representative);
- Mike Wall (Independent Member)
- Darren Peace (Parish Council Representative – Substitute)
- Lee Dillon (Parish Council Representative – Substitute)

3.4 There is still a vacancy for an Independent Member on the Advisory Panel.

4. Parish/ Town Councils

4.1 Parishes have continued to provide the Monitoring Officers with updates to parish councillors Registers of Interest and changes to their membership which are fed through and posted on the relevant websites.

5. Council's Constitution

5.1 Since October 2013 Part 4 (Council Rules of Procedure), Part 5 (Executive Rules of Procedure), Part 6 (Overview and Scrutiny Management Commission Rules of Procedure), Part 7 (Regulatory and Other Committees Rules of Procedure) and Part 13 (certain Codes and Protocols) have been amended.

6. Dispensations

6.1 The Standards Committee is reminded that the Standards Committee or Monitoring Officer may grant a dispensation to a Parish or District Council Member or co-opted Member in the following circumstances:

- (i) that so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would “impede” the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.]
- (ii) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (iii) that the authority considers that the dispensation is in the interests of persons living in the authority’s area.
- (iv) that without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (v) that the Council considers that it is “otherwise appropriate” to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.

- 6.2 It is considered that grounds (i) and (iv) are objective and it is recommended that dispensations on these grounds are delegated to the Monitoring Officer with an appeal to a Standards Committee. This would enable dispensations to be granted effectively “at the door of the meeting”.
- 6.3 Grounds (ii), (iii) and (v) are rather more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee after consultation with the independent person.
- 6.4 Since October 2013 the Monitoring Officer and the Standards Committee have each been asked to grant a dispensation to a group of West Berkshire District Councillors.
- 6.5 Members will recall that following the introduction of the Localism Act 2011 one of the Disclosable Pecuniary Interests (DPIs) which Members are required to disclose under the Authority’s Code of Conduct is “any beneficial interest” in land within the Authority’s area. It follows, therefore, that a Member who owns or rents (and/or whose spouse/partner owns or rents) land or property within West Berkshire has a DPI to disclose when any matter to do with the setting of the council tax is being considered by the Authority. Under the previous Standards regime an automatic dispensation was granted in relation to this matter but this situation has not been replicated under the Localism Act 2011.
- 6.6 As a member who has a DPI in a matter cannot participate in any discussion of, or vote on, that matter unless they have been granted a dispensation, a dispensation needed to be granted to all relevant district Councillors to enable them to participate in any matter which has a bearing on the setting of the council tax. The Monitoring Officer granted the dispensation to allow all 52 Members to speak and vote on items pertaining to the setting of Council Tax on the basis that failure to grant a dispensation would impede the transaction of the business because of the number of members having the same disclosable pecuniary interest.

- 6.7 The Standards Committee considered a dispensation request from Councillors David Allen, Howard Bairstow, Jeff Beck, Brian Bedwell, Dominic Boeck, Jeff Brooks, Hilary Cole, Roger Croft, Richard Crumly, Billy Drummond, Adrian Edwards, Sheila Ellison, Marcus Franks, John Horton, Carol Jackson-Doerge, Alan Law, Mollie Lock, Royce Longton, Alan Macro, Tim Metcalfe, Andrew Rowles, Anthony Stansfeld, Julian Swift-Hook, Ieuan Tuck and Tony Vickers. The reason for the request was that one of the Disclosable Pecuniary Interests (DPIs) which Members are required to disclose under the Authority's Code of Conduct is "Membership of other bodies: Details of any body exercising functions of a public nature of which you are a member or in a position of general control or management."
- 6.8 It followed, therefore, that a District Councillor who is also a Town or Parish Councillor had a DPI to disclose in relation to one of the recommendations in a report to the 12 December 2013 Council meeting as it included a recommendation that "No transfer of funding will be made to parish and town councils".
- 6.9 A failure to grant this dispensation would have meant that 25 of the 48 Councillors that were due to be present at the December 2013 Council meeting would have been prevented from taking part in the discussion or voting on this item. In this instance it was considered that ground iii) "that the authority considers that the dispensation is in the interests of persons living in the authority's area" may be applicable and the matter was therefore referred to the Standards Committee for determination. The Standards Committee agreed to grant a dispensation in this instance.
- 6.10 In addition, the Monitoring Officer wrote to all Parish and Town Councils on the 12 November 2013 to remind them that under the provisions of the Localism Act 2011 the ability to grant dispensations in order to discuss precepts had been delegated to the Town or Parish Council. The Parish and Town Councils were reminded that if any such dispensations were granted this should be recorded in the ensuing set of minutes of the meeting at which the precept was set.

7. Complaints Against Councillors

- 7.1 During Quarter 3 of 2013/14 (October –December 2013) two complaints were received by the Monitoring Officer: NPC11/13 and NDC4/13.
- 7.2 The Monitoring Officer, in consultation with the Independent Person, concluded that in respect of NPC11/13 informal resolution would be the most appropriate course of action. The subject member was asked to write to the complainant and set out the circumstances surrounding the comments that she had made and explain that they were made in her private capacity and that she had not sought to cause any offence.
- 7.3 Under the previous regime if the complainant disagreed with this finding they could ask for the item to be reconsidered by a Review Sub-Committee. The Localism Act does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option.
- 7.4 In respect of complaint NDC4/13 the complainant had asked for their identity to be kept confidential. Despite several attempts to contact the complainant no response has been received and therefore the complaint has not been progressed.
- 7.5 The Advisory Panel has not met during Quarter 3 nor has the Standards Committee met to consider any complaints.

8. Training or Other Action Identified to avoid Further Complaints

8.1 No training was undertaken during Quarter 3.

9. Conclusion

- 9.1 The number of complaints at this stage remains low and consequently no specific training needs have been identified. A number of minor changes have been made to the existing Code of Conduct for Members, primarily in respect of layout and it is hoped that these will clarify matters for members.
- 9.2 In addition in line with other principal Local Authorities a Social Media Protocol has been adopted ensure that councillors make use of social media effectively whilst avoiding potential accusations that they may be breaching the Council's Code of Conduct. It is also designed to ensure that the reputation of the Council and members is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.

Appendices

There are no appendices to this report

Consultees

Local Stakeholders: N/A

Officers Consulted: Moira Fraser, Andy Day, Sarah Clarke

Trade Union: Not consulted