



GA.07 12/13

Governance & Audit
Committee / Council

7 June 2012
2 July 2012

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Subject: The Localism Act 2011 – The Amended Standards Regime

Report by:

The Monitoring Officer

Contact Officer:

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Purpose / Summary:

To note the changes to the Standards Regime as introduced by the Localism Act 2011 and to adopt a Code of Conduct, appoint an Independent person and a Reserve, and approve arrangements for dealing with standards allegations.

RECOMMENDATION(S):

That it be RECOMMENDED TO FULL COUNCIL

1

- (a) That the Council establishes a Standards Sub-Committee comprising elected Members of the District Council, appointed proportionally;
- (b) That a maximum of 3 Parish Councillors be co-opted as non voting Members of the Sub-Committee.

2

- (a) That Council adopt the draft Code attached at Appendix 'A' and which is based upon the template issued by the LGA.
- (b) That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Sub-Committee and the Chair of Governance and Audit Committee, add to that Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs.

3

- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- (b) The arrangements for dealing with complaints of breach of Code of Conduct as attached at Appendix B be adopted.
- (c) That Council delegate to the Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:-
 - Censure or reprimand the Member.
 - Publish its findings in respect of the Member's conduct.
 - Reporting its findings to the Governance and Audit Committee or to the Parish Council for information;
 - Recommending to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - Recommending to the Leader of the Council that the Member be removed from particular responsibilities;
 - Instructing the Monitoring Officer to *or recommend that the Parish Council* arrange training for the Member;
 - Removing *or 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*;
 - Withdrawing *or 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
 - Excluding, *or recommend that the Parish Council 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.

4

- (a) That Council approve the appointment of ... as the Independent Person and ... as the reserve Member.
- (b) That the Monitoring Officer, in consultation with the Chair of Standards Sub-Committee and the Chair of Governance and Audit Committee, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Sub-Committee.

5 That Council delegate the power to grant dispensations –

- (a) To the Monitoring Officer with an appeal to Standards Sub-Committee.

6 That Constitution be amended as necessary and required to reflect the resolutions passed.

IMPLICATIONS

Legal:
As detailed in the main body of the report

Financial :
As detailed within the body of the report

Staffing :
As detailed within the body of the report

Equality and Diversity including Human Rights :
*NB: A full impact assessment **HAS TO BE** attached if the report relates to any new or revised policy or revision to service delivery/introduction of new services.*

Risk Assessment :

Climate Related Risks and Opportunities :

Title and Location of any Background Papers used in the preparation of this report:

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes

No

Key Decision:

Yes

No

1 Introduction

1.1 The Localism Act 2011

The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors and no longer requires a Standards Committee.

- 1.2 There is however still a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Sub-Committee. It is suggested that this be a normal Sub-Committee of the Governance and Audit Committee and be governed by proportionality, unless Council votes otherwise with no Member voting against.
- 1.3 The current co-opted independent members will cease to hold office as from 30 June 2012. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, and provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Sub-Committee, but are unlikely to be co-opted onto the Sub-Committee;
- 1.4 The District Council will continue to have responsibility for dealing with Standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many non voting Parish Council Co-opted representatives it wants.

2 The Code of Conduct

- 2.1 Members no longer have to give an undertaking to comply with the Code of Conduct.
- 2.2 The Council has discretion as to what it includes within its new Code of Conduct provided that it is consistent with the seven principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests.
- 2.3 The provisions of the Act also require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 2.4 The regulations have not yet been issued and as a result it is not possible to draft Code provisions which reflect the definition of DPIs at this time.
- 2.5 The Act prohibits members with a DPI from participating in authority business, and the Council can include a provision in the Code requiring members to withdraw from the meeting room.

- 2.6 Over the past few months, the Local Government Association (LGA), has been working alongside the National Association of Local Councils (NALC), the Association of Democratic Services Officers (ADSO), and AcSess and a template Code of Conduct has been issued for use by Local Authorities and it is recommended that this Code attached at Appendix A be adapted as detailed above and adopted.

3 Dealing with Misconduct Complaints

- 3.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Parish Council Members, and such complaints can only be dealt with in accordance with such “arrangements”.
- 3.2 The proposed arrangements are attached at Appendix ‘B’.

4 Independent Person(s)

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

4.1 “Independence”

The Independent Person must be appointed through a process of public advertisement and application and this process has taken place over the last 3 months. Appointment is by a positive vote of a majority of all members of the District Council (not just of those present and voting) and is one of the Recommendations included in this report.

4.2 The functions of the Independent Person(s) are outlined in Appendix B

4.3 How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a reserve candidate is retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

4.4 Remuneration

As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members’ allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Sub-Committee and Hearings Panels, but not to be a formal member of the Committee or Panel. He/she will need to be available to be consulted by members against whom a complaint has been made. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations.

- 4.5 The Chair of Governance and Audit Committee, along with the Chair of the current Standards Committee, and the Deputy Monitoring Officer, have interviewed candidates for the position of Independent Person and their recommendation is detailed below. Appendix C, which is exempt, contains relevant information.

5 Dispensations

- 5.1 The provisions on dispensations are significantly changed by the Localism Act And will be granted in the following circumstances:
- 5.1.1 That so many members of the decision-making body have DPIs in a Matter that it would “impede the transaction of the business”. In practice This means that the decision-making body would be inquorate as a result;
 - 5.1.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
 - 5.1.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - 5.1.4 That the authority considers that it is otherwise appropriate to grant a dispensation;
 - 5.1.5 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years;

West Lindsey District Council

Members Code of Conduct

As a member or co-opted member of West Lindsey District Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in West Lindsey District Council, this will be done as follows:

As a Member of West Lindsey District Council, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me – and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the [county][borough][Authority's area] or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

Arrangements for dealing with standards allegations (against a District Councillor) 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 authority has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

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 authority or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority 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 against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and is available for inspection on the authority’s website and on request from Reception at the Council offices.

3 Making a complaint

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 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 model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request by telephoning the Deputy Monitoring Officer on 01427 676509.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint. At this point in time, the person complained about will be informed of the receipt of the complaint and given a brief summary of the allegation.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and after consultation with the Independent Person and the relevant Group Leader, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, she will inform you of her decision and the reasons for that decision.

Where she requires additional information in order to come to a decision, she may come back to you for such information, and may request information from the member against whom your complaint is directed.

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. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

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.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, 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 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 can 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.

6 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 she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report.

7 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 and the relevant Group Leader, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and the relevant Group Leader 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 Sub-Committee 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 then make a decision as to whether to, along with the Independent Person and the Group Leader, refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, 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 Appendix Three to these arrangements.

Essentially, 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 Chair 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.

If 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 Chair 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.

8 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 –

- 8.1 Censure or reprimand the member;
- 8.2 Publish its findings in respect of the member's conduct;
- 8.3 Report its findings to Governance and Audit Committee;
- 8.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from any particular responsibilities;
- 8.6 Instruct the Monitoring Officer to arrange training for the member;
- 8.7 Remove from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.8 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 8.9 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.

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

9 What happens at the end of the hearing?

At the end of the hearing, the Chair 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, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Governance and Audit Committee.

10 Who are the Hearings Panel?

The Hearings Panel is made up of 3 members selected from the Standards Sub-Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and his 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.

11 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 –

- 11.1 Is, or has within the past 5 years, been a member, co-opted member or officer of the authority;
- 11.2 Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area, or
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

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

The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly or if it sought to impose a sanction which the authority had no power to impose.

Note 1: In those instances where there is no Group Leader to consult, the Monitoring Officer
Should consult with the Leader of the Council.

Note 2: If the complaint concerns a Group Leader or the Leader of the Council, then the Monitoring Officer will involve the relevant person from another Local Authority.

Arrangements for dealing with standards allegations (against a Parish Councillor) under the Localism Act 2011

13 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of a parish council within the area of West Lindsey has failed to comply with the Parish Council’s Code of Conduct, and sets out how West Lindsey District Council (WLDC) will deal with allegations of a failure to comply with the Parish Council’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the District Council must have in place “arrangements” under which allegations that a member or co-opted member of a parish council within the authority’s area has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority 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 co-opted member of a parish council against whom an allegation has been made.

14 The Code of Conduct

Each parish council has adopted a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

15 Making a complaint

The Monitoring Officer is a senior officer of West Lindsey District Council and 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 model complaint form, which can be downloaded from the authority's website, and is available on request by telephoning the Deputy Monitoring Officer, on 01427 676509.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint. At this point in time, the person complained about will be informed of the receipt of the complaint and given a brief summary of the allegation.

16 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person and a Local Ward Member, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, she will inform you of her decision and the reasons for that decision.

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

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. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

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.

17 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, she will appoint an Investigating Officer, who may be another senior officer of West Lindsey District Council, 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 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 can 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.

18 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 she 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, notifying you that she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report.

19 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 after consulting the Independent Person and the Local Ward Member, either send the matter for local hearing before the Hearings Panel or, seek local resolution.

19.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, she will consult with the Independent Person and a Local Ward Member 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 Parish Council. If the member complies with 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. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will then make a decision as to whether to, along with the Independent Person and the Local Ward Member, refer the matter for a local hearing.

19.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, 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 Appendix Three to these arrangements.

Essentially, 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 Chair 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.

If 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 Chair 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..

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

The Hearing Panel will endeavour to take into account all aspects of the particular case and look at the picture as a whole. In order to help a Parish Council to develop and improve functionality, the Hearings Panel may –

- 20.1 Report its findings to the Parish Council for information;
- 20.2 Recommend that the Parish Council arrange training for the Member;
- 20.3 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;
- 20.4 Recommend specific action or training to the Parish Council to aid its development and improve functionality;
- 20.5 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
- 20.6 Recommend that the Parish Council 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.

21 What happens at the end of the hearing?

At the end of the hearing, the Chair 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 Governance and Audit Committee.

22 Who are the Hearings Panel?

The Hearings Panel is made up of 3 members selected from the Standards Sub-Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and his 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.

23 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 –

- 23.1 Is, or has within the past 5 years, been a member, co-opted member or officer of the authority;
- 23.2 Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area, or
- 23.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 23.3.1 Spouse or civil partner;
 - 23.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 23.3.3 Grandparent of the other person;
 - 23.3.4 A lineal descendent of a grandparent of the other person;
 - 23.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 23.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 23.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

24 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

The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly or if it sought to impose a sanction which the authority had no power to impose.

Note: In those instances where there is more than one Local Ward Member the Monitoring Officer will

Want to do something worthwhile for your local community?

West Lindsey District Council is looking to appoint an Independent Person and one reserve to undertake the following functions:-

- Must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decided on action to be taken in respect of that Member.
- May be consulted by the authority in respect of a Standards complaint at any other stage.
- May be consulted by a Member or Co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

If appointed, you will play a key part in promoting and maintaining high standards of conduct by Members and Co-opted Members of the District Council and Parish Councils.

A person cannot be “independent” if he/she –

- Is or has, within the past 5 years prior to 1 July 2012, been a Member, Co-opted Member or officer of the authority, or of a Parish Council within the authority’s area.
- Is a relative, or close friend of a person detailed above. For this purpose, “relative” means:-
 - (i) Spouse or civil partner
 - (ii) Lives with the other person as husband and wife or as if they were civil partners.
 - (iii) Grandparent.
 - (iv) Any person who is a lineal descendent of the candidate’s grandparent.
 - (v) A parent, brother, sister or child of anyone in paragraphs (i) and (ii).
 - (vi) The spouse or civil partner of anyone within paragraphs (iii), (iv) or (v) or
 - (vii) Any person living with a person within paragraphs (iii), (iv) or (v) as if they were spouse or civil partner to that person.

The amount of time dedicated to this role will be dependent upon the number of complaints received and a small fixed allowance will be payable together with travel and subsistence expenses.

If this opportunity interests you but would like to discuss it further without committing yourself, please telephone Alan Robinson, Deputy Monitoring Officer 01427 676509.

Alternatively, you can request an information pack and application details by calling the same number.

Closing date for applications: 25 May 2012

The Council has a commitment to equal opportunities and welcomes applicants from all sections of the community. Also we operate a no smoking policy.

West Lindsey District Council Employer of Choice



Making A Difference



INVESTOR IN PEOPLE

