

5. ROLE OF INDEPENDENT PERSONS TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

REPORT OF: Tom Clark, Solicitor to the Council and Monitoring Officer
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Wards Affected: all

Key Decision No

1. Purpose of the Report

- 1.1 To describe the role of the independent person as part of the Council's Standards regime.

2. Summary

- 2.1 The Council has appointed 2 independent persons. By geographical letter they deal with different District Council members and different Parish Councils. They are consulted by the Monitoring Officer on receipt of any complaint and prior to any decision being taken on an investigated complaint.

3. Recommendations

- 3.1 To note the role of the independent persons and request Council to include this as part of the Constitution.**
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4. Background

- 4.1 The Localism Act 2011 abolished the previous role of independent persons as members and Chairman of Standards Committee. However, a role for independent persons was retained in Section 28(7) of the Localism Act 2011.
- 4.2 In the summer of 2012 the Council appointed 2 such independent persons, former Standards Committee Chairman Sir Roger Sands and Gerard Irwin.
- 4.3 The legislation requires the views of those independent persons to be sought by the Monitoring Officer prior to any complaint being put before the Standards Committee and before any decision is made on any investigated complaint. A member in receipt of a complaint can also make contact with the relevant independent person. The procedure also provides for those wishing to make a complaint to contact the independent person.
- 4.4 The independent persons attend the Standards Committee and provide advice to the Committee but are not members of the Committee and therefore have no voting powers.
- 4.5 Hoey Ainscough Associates set up several regional workshops to consider the role of independent persons. Gerard Irwin attended one of these on behalf of Mid Sussex District Council. As a result of these workshops Best Practice proposals were brought forward most of which are reflected in the Council's current procedures.

4.6 The main recommendations were as follows:-

- 1) The same independent person should be involved in one allegation throughout to maintain consistency. Our system of Gerard Irwin dealing with wards beginning with letters A-F and Parish Councils beginning with letters A-F and Sir Roger Sands dealing with the remaining wards and Parish Councillors starting with letter G onwards produces this separation and approximately balances the workload.
- 2) The independent person should be consulted before a matter is taken to an Assessment Sub -Committee but any decision whether or not to reject the complaint at that stage is taken by the Monitoring Officer.
- 3) The complainants may have access to the relevant independent person but the independent person will not give their views on the merits or otherwise of the complaint but will assist with procedural matters.
- 4) The member under investigation can contact the independent person but the independent person should refrain from giving any view on the merits of the complaint and will also keep the Monitoring Officer informed of such discussions.
- 5) The independent person will need to ensure that the member or complainant is aware that the substance of the discussion will be reported to the Monitoring Officer although certain details might be kept confidential.
- 6) The Monitoring Officer may consult the independent person at any stage of the process but will do so ahead of any decision being taken on a matter being investigated.
- 7) The independent person will not make any comments to the media without prior agreement from the Monitoring Officer who in turn will speak to the Chairman of the Standards Committee before any statement is given.
- 8) The independent person may assist in any mediation or conciliation in order to resolve complaints.
- 9) The independent person may assist the Monitoring Officer or Standards Committee in any training.
- 10) Where the independent person finds themselves with a conflict of interest the other independent person will deal with the complaint. If however that person also has a conflict then an independent person in a neighbouring authority can be consulted.
- 11) The independent person will receive all agendas and minutes of Standards Committee meetings and will be expected to attend those meetings and speak with the agreement of the Chairman. The independent person is not a member of the Standards Committee.
- 12) The independent person can raise concerns with the Council's Chief Executive and in extreme cases address a meeting of the full Council.
- 13) The independent person has a right to access of any confidential information required to carry out their roles.

- 14) The Monitoring Officer will meet at least yearly with the independent persons.
- 15) The independent person will agree to sign the Members' Code of Conduct and complete a register of interests form to be held by the Monitoring Officer and will declare any relevant interests in relation to cases to the Monitoring Officer who will decide whether the interest conflicts them out of involvement with the matter.
- 16) The independent person is to be considered an office holder of the authority in accordance with the duty under Section 28(7) of the Localism Act 2011 and is therefore entitled to be covered by the Council's Indemnity Insurance provided they act reasonably within the terms of this description.

5. Financial Implications

- 5.1 There are no financial implications from this report. Maintaining good standards should in the long run save money on expensive investigations.

6. Risk Management Implications

- 6.1 The role of the independent person is important in the Standards structure. It is desirable that that role is set out in the Council's Constitution.

7. Equality and Customer Service Implications.

- 7.1 Both the complainant and the member in receipt of the complaint have access to the independent person.

8. Legal Implications.

- 8.1 The role of the independent person is set out briefly in the Localism Act 2011. This report builds on that role following a workshop analysis by members, officers and experts on Standards matters from across England.

6. WHEN SHOULD A MATTER BE REFERRED TO THE POLICE FOR A POSSIBLE PROSECUTION UNDER SECTION 30(1), 31(2) OR 31(3) OF THE LOCALISM ACT 2011?

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Email: tom.clark@midsussex.gov.uk Tel: 01444 477459

Wards Affected: all

Key Decision No

1. Purpose of the Report

1.1 To seek the Standards Committee view of when a matter should be referred to the police for a possible prosecution under the Localism Act 2011.

2. Summary

2.1 The Localism Act provides for a possible prosecution of a member who fails to properly complete the disclosure of disclosable pecuniary interests on election or fails to disclose such an interest at a relevant meeting or fails to update their disclosure of disclosable pecuniary within 28 days of those interests arising.

3. Recommendations

3.1 **The Committee are asked to consider this report and give their views on how any request for a prosecution should be dealt with.**

4. Background

4.1 Recently as Monitoring Officer I received a request from a member of the public to report a matter to the police on the basis the elected member had failed to register a land interest in their register of disclosable pecuniary interests. I declined to make this reference given any such failure did not seem to generate any question of harm because there was no suggestion that any matter had come up at the Parish Council where such an interest would have to have been disclosed.

4.2 The "Sussex" code of Conduct requires members under paragraph 13 to complete the register of interests. It is therefore possible for a member of the public to make a Code of Conduct complaint that a member has not properly completed the register of interests and therefore raises the possible sanction of a prosecution.

4.3 A prosecution can only be brought with the consent of Director of Public Prosecutions. Therefore investigation of the matter would fall to the police.

5. Options Going Forward

5.1 If such a situation arose again the following options would seem to be open:-

a) As Monitoring Officer I can simply take a view on the complaint and if it raises issues of potential public interest I could refer the matter to the police.

b) I could consult with the relevant independent person before referring the matter to the police.

- c) I could refer the matter to a Sub Committee to consider, solely in the light of the complaint, whether or not to report the matter to the police.
- d) I could follow our usual practice and invite the member in receipt of the complaint to give his or her view (subject to a caution about a possible prosecution) and set up a Sub Committee in the normal way where that Committee would have both the complaint and any written explanation from the member in receipt of the complaint. The Sub Committee could then decide whether or not the matter should be referred to the police. Given that a prosecution is a possibility it would not be appropriate for us to carry out an investigation prior to the police considering the matter.
- e) Given the Sub Committee's meet private, if c & d were followed, it would not put the matter into the public domain thereby prejudicing any future police investigation or prosecution.

6. Other Options Considered.

- 6.1 It would be quite straight forward to simply refer any such request to the police. This would not seem to be the best use of police time if the complaint is one of technicality rather than of demonstrable harm.

7. Financial Implications

- 7.1 Any investigation of a complaint is a cost to the public purse whether done by this authority or the police.

8. Equality and Customer Service Implications.

- 8.1 It would be preferable to publish some guidance on the Council's response to a request for a prosecution under these sections so that it was clear that all requests were being treated on an equal basis.

9. Legal Implications.

- 9.1 Given that the consent of the Director of Public Prosecutions is required before any such prosecution can take place they are likely to be rare. Prosecution under Section 30(1) can only apply to councillors elected after the 1st July 2012.