

7. REPORT – PROSECUTIONS & THE LOCALISM ACT 2011

REPORT OF: Tom Clark
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Wards Affected: All
Key Decision N/A

1. Purpose of the Report

- 1.1 Following the debate at the last Standards Committee,, to agree a procedure for requests for prosecutions under the Localism Act 2011 Sections 30(1), 31(2), and 31(3).

2. Summary

- 2.2 The Committee discussed dealing with requests for such prosecutions from members of the public at the meeting in March 2013. The report brings back proposals for agreement in the light of those discussions.

3. Recommendations

- 3.1 **If the Monitoring Officer receives a request from a member of the public to refer a matter to the police for a possible prosecution under the Localism Act 2011 for a failure to properly declare a disclosable pecuniary interest, the Monitoring Officer shall consult with the relevant independent person.**
- 3.2 **If the view of the Monitoring Officer and the Independent person is that there is a potentially serious breach of the requirements to register and disclose a disclosable pecuniary interest then the matter shall be referred to the police.**
- 3.3 **If there appears to be a potential breach but it is not apparent that there have been any serious consequences as a result, the complainant shall be invited to make a Code of Conduct complaint and the matter will be dealt with through the standard procedure.**
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4. Background

- 4.1 When the Committee discussed this matter in March 2013 there were mixed views but a majority favoured dealing with such a request for a prosecution as a standards complaint. In most cases this would work well with the member of the public having the option of complaining directly to the police about the matter remembering that a prosecution can only be brought with the consent of the Director of Public Prosecutions.
- 4.2 However, there may be a few cases where on the face of it there are serious consequences as a result of a failure to declare such a disclosable pecuniary interest. An example may be where a councillor fails to declare that they own a piece of land and then deal with a planning application on that land brought by a third party. In those circumstances it would seem appropriate for the matter to be reported directly to the police without the risk of any interest inquiry affecting the police investigations.

5. Other Options Considered

- 5.1 One option is to forward every request for a prosecution to the police. This would seem to invite a waste of police resources in most cases. Alternatively all requests for a prosecution could be treated as a complaint and dealt with through the complaints mechanism. This may prejudice the investigation by the police of the most serious complaints.

6. Financial Implications

- 6.1 Any investigation of a complaint is the cost of the public purse whether done by the police or the local authority.

7. Equality and customer service implications

- 7.1 In most cases the complainant would be invited to submit a complaint alleging a failure to disclose a pecuniary interest. They are still free to report the matter directly to the police. In a small minority of cases the matter may appear so serious that the Monitoring Officer, following consultation with the Independent person, may report the matter to the police direct.

8. Legal Implications

- 8.1. Prosecutions under chapter 7 of the Localism Act 2011 can only be brought with the consent of the Director of Public Prosecutions. The provisions only apply fully to members that have been elected after the 1st July 2012 when the requirement to comply with disclosure of disclosable pecuniary interest became a legal requirement.

8. DISCUSSION PAPER ON THE PROCESS TO DEAL WITH CODE OF CONDUCT COMPLAINTS.

REPORT OF: Tom Clark, Solicitor to the Council and Monitoring Officer
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Wards Affected: all
Key Decision N/A

1. Purpose of the Report

- 1.1 To discuss the procedure used to deal with complaints and consider any changes or improvements that can be made.

2 Summary

- 2.1 This discussion paper is for the Committee to look at the way the Council deals with Code of Conduct complaints and to suggest any changes that might be made.

3. Recommendations

- 3.1 To note the procedure set out in Schedule 1 of this report and to consider any changes that might be made.**
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4 Background

- 4.1 The Localism Act 2011 abolished the previous role of independent members on the Standards Committee, it abolished the central role of Standards for England and it introduced the role of independent persons who assisted with the Standards in a Council but are not members of the Standards Committee.
- 4.2 These changes meant the enforcement of the Standards regime became an internal matter for the District Council with responsibilities for these issues for Town and Parish Councils within the District.
- 4.3 Over the past 12 months the District Council has seen a fall in complaints about District Council members but an increase in complaints about Town and Parish Council members. The production of Neighbourhood Plans is a controversial matter in many Town and Parish Councils. Where members of the public do not like what the Council are doing they seek to make complaints about elected members frequently on the basis that they have failed to take into account that persons views and therefore must have treated them with disrespect.
- 4.4 The procedure adopted at the District Council to deal with such complaints is set out in summary form in the schedule to this report. Members are asked to consider any changes that could be made to assist with this process.

5. Other Options Considered

- 5.1 The process used by the District Council reflects the procedure previously used under the guidance of Standards for England. It is therefore believed to be Human Rights Act compliant. The Council is free to adopt any procedure it wishes, there being no central guidance.

6. Financial Implications

- 6.1. There is a cost in dealing with complaints made by members of the public. That cost increases substantially if the matter is investigated.

7. Equality and customer service implications

- 7.1 All complaints have to be considered. If on the face of it they do not disclose any Code of Conduct complaint then there is no jurisdiction for the District Council to take the matter any further by way of an Assessment Sub- Committee.

9. Legal Implications

- 9.1 There is a requirement for the Council to have a Code of Conduct, for its elected and co-opted members to complete a register of interests, for those register of interests to appear on the Council's website and the District Council must have arrangements to investigate any Code of Conduct complaints.

Schedule 1.

Process for Dealing with Complaints.

1. The Council's website gives a brief explanation about making a complaint alleging a member has breached the Members Code of Conduct and inviting a potential complainant to contact the Independent person Gerard Irwin for District wards and Town and Parish Councils beginning with the letter A to F and Sir Roger Sands for the rest of the alphabet. There is an optional complaint form which guides a complainant to give the information required.
2. On receipt of a written complaint the Monitoring Officer will send a copy to the relevant independent person with a view on whether the complaint appears to show a potential breach of the Members Code of Conduct. The independent person will give their view.
3. If there is no potential breach of the Members Code of Conduct the complainant will be written to explaining this and explaining any other course of action they may wish to take. If there is a potential breach of the Code of Conduct a letter will be sent to the complainant explaining their complaint is now being sent to the Member named in the complaint for their comments.
4. The Member in receipt of the complaint has 14 days in which to respond in writing if they wish. They are advised they may wish to take independent advice. They can also speak to the independent person relevant to their area.
5. Normally the person in receipt of the complaint makes a written submission with their version of events.
6. The papers are copied and sent to the sub-committee of 3 members with a letter giving some direction about the complaint.
7. The 3 members meet privately with the Monitoring Officer and the first question asked is whether the Code of Conduct applies to the events described. If the answer to that question is "no" that is the end of the matter. Assuming the answer to that question is "yes", the Sub Committee has to decide whether there is a potential breach of the Code of Conduct. If they decide there is no potential breach of the Code of Conduct that is the end of the matter. If they believe there is a breach of the Code of Conduct they need to decide whether it is in the public interest for that potential breach to be further investigated at public expense or whether some more informal guidance should be given to the Member who has potentially breached the members Code of Conduct.
8. The results of their deliberations are sent in writing to the person who made the complaint, to the Member in receipt of the complaint and to any relevant Town or Parish Council.
9. Assuming that the Assessment Sub-Committee have decided against an investigation the person making the complaint can ask for this decision to be reviewed. The Review Sub-Committee look at all the papers and any additional papers that have been added with the comments of the Member in receipt of the complaint made to any additional claims.

10. The Review Sub-Committee go through the same exercise and their deliberations are reported in the same way. The letter is normally drafted by the Monitoring Officer but sent to the Sub –Committee Members for their approval and changes. There is an option for this letter to go out in the name of the Sub-Committee Chairman.
11. If the Assessment Sub-Committee or the Review Sub-Committee decides that the matter should be investigated then an independent investigator is appointed by the Monitoring Officer to carry out that investigation. The investigator would normally interview relevant persons and prepare a report and recommendations. That draft report will be shared with the independent person for their comments. It will then be shared with the complainant and the Member in receipt of complaint for their comments before the report is finalised.
12. The finalised report is sent to the Hearing Sub-Committee. If the report recommends no action and the Hearing Sub-Committee agrees that will be the end of the matter and it will be reported accordingly. If however the Hearing Sub-Committee feel that there needs to be a hearing then that will be set up and the report will be presented by the Investigating Officer. The Member in receipt of the complaint will then be able to respond and be legally represented if they wish and call a limited number of witnesses.
13. The powers of the Hearing Sub-Committee are limited. They are really around publishing their findings. If however there has been uncovered something that could potentially be a criminal offence the Hearing Sub- Committee could report it to the police for further investigation. They have no power themselves to suspend or disqualify an elected member.