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1. **PURPOSE OF REPORT**

To inform members of the changes to the system of regulation of standards of conduct for elected members of Councils. The report highlights changes and seeks Members views and agreement on some of the arrangements to implement the new regime.

2. **RECOMMENDATION**

- 2.1 That Council note the changes made to the regime by the Localism Act.
- 2.2 That Council provide guidance to the Monitoring Officer on how the complaints process can be administered for complaints about Borough and Parish Members. An example of how this may be administered is contained in paragraph 3.16.
- 2.2 That Council agree to the proposal to jointly recruit "Independent person(s)" as contained in paragraph 3.13 and seek to appoint at least one Independent Person a future Council meeting.
- 2.3 That Council note that a draft Code of Conduct and Regulations are awaited and that a report be brought back to the June meeting of Council to consider these further.

3. **BACKGROUND TO THE REPORT**

- 3.1 Chapter 7 of the Localism Act 2011 sets out the provisions in respect of the conduct of members under the new legislation. Standards For England has now been abolished and we have entered into a transitional phase prior to the new provisions coming into force which is anticipated to be 1st July 2012. Appendix 1 contains the full provisions.
- 3.2 There is no longer a statutory requirement to have a Standards Committee, however each authority will need to put in place arrangements dealing with complaints and standards issues. It is a Council function, so the Council must either deal with it itself, appoint a Committee (politically balanced) or delegate the function to an officer. The current Independent Members and Parish Council representatives will cease to be Members of the Standards Committee.
- 3.3 The Borough Council will continue to have responsibility to deal with complaints about elected and co opted Members of Parish and Town Council's in the Borough's area. As such the Council can choose to co opt non voting Parish Members on to any Committee delegated to carry out this function. "Independent Persons" can not be co opted to a Committee.
- 3.4 All Council's have the following duties:
- Promote and maintain high standards of conduct of members
  - Adopt a code of conduct which is consistent with the Seven Principles of Public Life and include provisions for the registration and disclosure of pecuniary and other interests.
- 3.5 A Principal Authority (Hinckley and Bosworth Borough Council must

- Ensure there are arrangements must be in place for the investigation and determination of allegations.
  - Appoint at least one Independent Person
  - Establish and maintain a register of members' interests
- 3.6 An allegation must be written and concern a member of the Authority or Parish Council failing to comply with the Code of Conduct. Where there is a failure to comply the Authority must determine whether to take action and what action to take. The Act repeals the requirements for separate Assessment, Review, Consideration and Determination Sub Committee's and enables the Council to establish its own processes. The Council must delegate appropriate powers to a Committee or the Monitoring Officer.
- 3.7 The view of an "Independent Person" must be sought and taken into account before a decision on an allegation it has decided to investigate is made. The views of the independent person may also be sought by the Authority at other times and by a member whose behaviour is the subject of an allegation.
- 3.8 It is for the Authority to determine what information should be provided, in the register of interests, as long as it complies with the Act. The Monitoring Officer of the Principal Authority is required to administer this for the Principal and Parish and Town Councils.
- 3.9 The concept of personal and prejudicial interests has been abolished and replaced with "Disclosable Pecuniary Interests" which are yet to be defined these must be disclosed on the register.
- 3.10 The Monitoring Officer must ensure that the register is available for inspection by the public and published on the Authorities website omitting any information that is deemed to be sensitive i.e. could lead to the member being subject to violence or intimidation. In addition to copies on the Principal Authorities website, a Parish Council who has a website must publish the information on it.
- 3.11 The Act has also introduced criminal offences concerning Member Interests, it is an offence, without reasonable excuse, to fail to provide notification of a disclosable pecuniary interest; fail to disclose an interest not registered; participate or vote when prohibited; and knowingly or recklessly providing information within a notification which is false or misleading. Upon conviction the court may impose a fine and/or disqualify the member from office for up to 5 years.

### **3.12 Decisions to be made before commencement of the new regime**

- 1. Appointment of "Independent Persons"**
- 2. Approval of a Code of Conduct and Register of Interests**
- 3. Approval of a Standards Complaints Process**
- 4. Changes to the Constitution**

### **3.13 Appointment of Independent Persons**

The Principal Authority must appoint at least one "Independent Person", the independent person can only be appointed following the submission of an application following advertisement and approval by a majority of the members of the Authority.

In order to be eligible the independent person must not be or have been in the previous 5 years a member, co-opted member or officer of the HBBC (or a relative, partner or close friend of that member).

It is proposed that Hinckley and Bosworth Borough Council collaborate with the other District Councils in Leicestershire as well as the County Council to jointly recruit "Independent Persons". It is felt that this will save time and resources for all Councils.

If Council is agreeable to this process, Harborough District Council will administer the recruitment and Monitoring Officers from 3 Districts and the County Council will undertake the interview process. The Standards Committee have been asked to comment on the job description and person specification to be used in this process.

It is anticipated that a pool of perhaps ten Independent Persons can be shortlisted for each Principal Authority to appoint at least one from.

### 3.15 Code of Conduct and Register of Interests

At the time of writing the report the Local Government Association and ACSeS are in discussions about proposed Codes of Conduct which can be adopted by all Councils. As there is no prescribed model Code which must be adopted under the legislation, there is a possibility that in the Hinckley and Bosworth Area we could end up with 25 different Codes of Conduct. This would be extremely difficult to administer particularly in relation to complaints and could cause confusion particularly to Members who are dual hatted.

It is felt that a common code across the whole of Leicestershire would be beneficial and essential for any future collaboration. Leicestershire and Rutland Association of Parish Clerks are working with the Monitoring Officers across the County to achieve this.

It is proposed that the draft Codes are brought before Council for consideration and adoption at a future meeting.

With regard to the Register Of Interests, guidance on pecuniary and non pecuniary interests is awaited.

### 3.16 Standards Complaints Processes

It is important to balance the need to deal with allegations promptly and without undue delay with the need to ensure natural justice for the member concerned. The new regime offers an opportunity to simplify the process. The Monitoring Officers are working on having a similar process across Leicestershire and has worked up this basic model. Members are asked for their comments and advice on these draft proposals.

1. Informal Complaint received
2. Monitoring Officer looks to resolve matter informally
3. Formal Complaint received
4. Initial fact finding by the Monitoring Officer to see if the member has a case to answer. This could include speaking to complainant and subject member, potentially speaking to the Parish Clerk and obtaining minutes of meetings.
5. The Monitoring Officer drafts a report and makes a recommendation as to what should happen next in consultation with the Independent Person.
6. The fact finding report would be considered by a committee of the authority with delegated authority to determine whether or not the member has a case to answer

7. Where there is no case to answer that would be the end of the matter (would Members think that the complainant has a right of Appeal?)
8. Where there is a case to answer the committee can determine either that further investigation is needed or that a hearing of Members of the Authority (would members want the Committee to include Parish Co opted Members on any Committee considering breaches by Parish Councillors?) be arranged to consider whether there has been a breach.
9. Where a hearing is arranged to consider whether there has been a breach the Subject Member and any relevant witness can be called and the Committee can then determine the matter and impose any necessary sanction (Censure) or make recommendations to a relevant Parish Council.
10. The member would have a right of appeal against the sanction

### 3.17 Changes to the Constitution

The changes which are required will be

1. Amendment of the Code of Conduct
2. Removal of the Standards Committee responsibilities
3. Appointment of either a new Committee of the Council to deal with Standards Complaints, potentially called the Ethical Governance Committee or allocation of the role to another Committee of the Council.
4. Council Procedure Rules amended to deal with declarations of Interest and leaving the meeting where a Member declares an interest.

### 3.18 Summary

Members are asked to consider the impact of the legislative changes and provide guidance to the Monitoring Officer as to how these matters can be taken forward. The Standards Committee are also considering this report on 5 April 2012, this report must be circulated prior to that meeting being held as such the feedback from the Standards Committee will be provided to Council as a late item.

#### 4. FINANCIAL IMPLICATIONS AB

None. It is anticipate the changes will be met within existing resources

#### 5. LEGAL IMPLICATIONS LH

Contained within the body of the report

#### 6. CORPORATE PLAN IMPLICATIONS

Strong and Distinctive Communities

#### 7. CONSULTATION

Standards Committee, Leicestershire ACSeS.

#### 8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

- [1. Use the RISK TACTICAL approach detailed in the Risk Management Strategy (available on the intranet) to identify any risks associated with this report / decision;
2. Assess the risks identified using the corporate assessment criteria for likelihood and impact detailed in the Risk Management Strategy to determine risk levels;
3. Please ensure that risks are captured on project, service or corporate risk registers;
4. Ensure the risks are contained in the Service Improvement Plan for your service area;
5. Record significant risks (ie those that remain red after accounting for current mitigating actions and require treatment – Net Red risks) in the box below.]

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

An equality impact assessment will be undertaken on the process once a draft is agreed.

All complainants and councillors will be treated equally and fairly and in accordance with the principles of natural justice.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

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Background papers: Previous standards reports

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