

**HUNTINGDONSHIRE DISTRICT COUNCIL**

**Title/Subject Matter:** Arrangements for dealing with Standards allegations under the Localism Act 2011: Proposed amendments

**Meeting/Date:** Standards Committee - 5 December 2013

**Executive Portfolio:** Strategic Economic Development & Legal

**Report by:** Head of Legal & Democratic Services

**Wards affected:** All

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**Executive Summary:**

To review and update the adopted procedure for dealing with Code of Conduct standards complaints in the light of practical experience over the last 18 months.

**Recommendation:**

That the proposed amendments to the "Arrangements for Dealing with Standards Allegations under the Localism Act 2011" Protocol set out in Appendix 1 be approved.

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## **1. WHAT IS THIS REPORT ABOUT?**

- 1.1 To review and propose amendments to the Protocol for dealing with Standards allegations under the Localism Act 2011, in the light of practical experience in operating the scheme for 18 months.

## **2. BACKGROUND**

- 2.1 Under Section 28 of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member of the authority or 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.
- 2.2 A Protocol was approved when the new Code of Conduct was adopted in July 2012. A number of issues have been raised as a result of the complaints received and it is considered necessary to make a number of changes to the Protocol to clarify certain aspects and thereby better manage expectations of complainants.

## **3. ANALYSIS**

- 3.1 Whilst the Code expressly states that the Code of Conduct only applies whenever a Councillor is acting in an official capacity e.g. at formal meetings of the Council (or if they are claiming or giving the impression they are acting in an official capacity), many complainants believe that the Code of Conduct applies to their conduct or actions at all times. Hence complaints have been made where the alleged conduct related to a neighbour dispute. Equally, there were complaints arising from alleged breaches arising from the County Council election campaign where again the individuals were candidates and not acting in their “official” capacity as a Councillor.
- 3.2 In addition the Courts have made it clear that a balance needs to be struck between compliance with the Code of Conduct e.g. in treating others with respect and the right to freedom of expression, particularly freedom of political expression. In *Calver v Public Services Ombudsman for Wales* the High Court quashed the censuring of a Councillor for “sarcastic and mocking” comments posted on a website. The Judge said that “despite the unattractiveness of much that was posted” most was not simply personal abuse and fell within political expression “in its broader sense”. He also commented about the need for “politicians to have thicker skins than others”. Whilst not condoning or encouraging intemperate or excessive language, there is a balance to be struck as it is not the purpose of the Code to inhibit robust political debate.
- 3.3 The new paragraph 4 of the Appendix is intended to address and clarify the issues described in 3.1 and 3.2 above.
- 3.4 As Members are aware, the cost of carrying out a full investigation will usually cost several thousand pounds and can be much more. Under the present regime, the sanctions available are very limited and so it seems sensible to take account of whether there are more suitable routes for resolution that could be pursued at least in the first instance and to emphasise that not all complaints will be pursued, even where there may be prima facie evidence of a potential breach, if it is not sufficiently serious to justify further action.
- 3.5 The issues identified in 3.4, together with the point made in the *Calver* case regarding the expectation regarding the expectations of elected members as

opposed to members of the public, are addressed in the amendments to the “Criteria for Assessment” set out in the new paragraph 6 of the Appendix.

#### **4. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION**

4.1 It is proposed that the amended Protocol be introduced immediately.

#### **5. LEGAL IMPLICATIONS**

5.1 As stated in paragraph 2.1 the Council is required to put in place arrangements for dealing with standards complaints.

#### **6. RECOMMENDATIONS**

6.1 The Committee is

RECOMMENDED

to approve the amendments to the “Arrangements for Dealing with Standards Allegations under the Localism Act 2011” Protocol set out in Appendix 1

#### **7. LIST OF APPENDICES INCLUDED**

Appendix 1 – “Arrangements for Dealing with Standards Allegations under the Localism Act 2011.”

#### **BACKGROUND PAPERS**

Localism Act 2011

#### **CONTACT OFFICER**

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