



East
Northamptonshire
Council

Standards Board – 14 March 2012

Future Standards Arrangements at East Northamptonshire Council

Purpose of report

The purpose of this report is to present the comments of the Policy and Resources Committee, Scrutiny Committee and Town and Parish Councils in relation to the key issues that the council will need to consider for its future arrangements required by the standards aspects of the Localism Act.

Attachment(s)

Appendix 1: Revised Draft Code of Conduct for Councillors.

Appendix 2: Draft Revised Local Assessment Procedures **(To follow)**

1.0 Background

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted councillors (Sections 26-37 of the Act) which take effect from 1 July 2012.
- 1.2 At the time of writing this report, the regulations defining the Discloseable Pecuniary Interests (DPIs) that will have to be declared by councillors on their Register of Interests have yet to be issued although they are expected soon. (These will be circulated widely as soon as they are published). It is understood that they will be closely based on the current prejudicial interest provisions. The final form of future arrangements (including the Code of Conduct) will be dependent upon these regulations.
- 1.3 A further complication in relation to timescales is that the Local Government Association has now decided to issue two 'template' Codes of Conduct for Councillors. The reason for a choice is that one is minimalist in style, based on the Nolan Principles, which may be similar to the code we have been developing here at ENC. There is however a concern that this may be 'too general' in nature which may therefore make it more likely to attract complaints than a more precise Code.
- 1.4 The second LGA template Code is therefore a more detailed code, which I understand may also include examples of acceptable and unacceptable behaviour, together with a preamble about the Nolan Principles and reinforcement of the DPI provisions. In addition the Association of Council Secretaries and Solicitors is issuing its own model Code which may fall between the two. All of these Codes are due to be published around 16 March so may not be available for this meeting
- 1.5 The Standards Working Party has reviewed the comments made by the Scrutiny Committee on 6 February and the Policy and Resources Committee on 13 February. It has also been circulated with the comments from the meeting with Town and Parish Councils on 27 February and other information updates. Their comments on these have helped shape the proposals in sections 2-8 of this report.
- 1.6 It is proposed that appendices to support these proposals will be drafted and added to the relevant reports for Policy and Resources Committee on 2 April and Scrutiny Committee on 4 April. However, due to the delays in issuing possible Codes and the DPI regulations, together with other workload demands, it is probable that the final documentation will not be available until the report to council on 23 April, including the necessary constitutional changes. It is anticipated therefore that there will be a need for meetings of the Standards Working Party right up to this date.

2.0 Standards Committee

2.1 There were more mixed views about the future committee arrangements than most other elements of the possible future arrangements:

- The majority at the Scrutiny Committee meeting voted for a ENC Committee (without co-opted members from Town and Parish Councils) rather than a Joint Committee.
- At Policy and Resources Committee there were more equally mixed views as to whether ENC or Joint Committee would be appropriate and the latter was favoured at this stage although it was appreciated that some parishes would need guidance.
- Town and Parish Councils represented at the 27 February meeting were generally supportive of the proposal for a Joint Standards Complaints Committee with election arrangements as now and delegation to deal with complaints

2.2 The common principles that emerged were:

- EN Councillors should decide the Code and procedures that they would adopt – but they hoped the Town and Parish Councils would adopt the same Code
- those serving on any ENC Committee should be democratically elected and not co-opted
- only councillors from the relevant tier of council should be involved in assessing any complaints from that tier.

2.3 It is proposed that Code of Conduct for Councillors would continue to form part of the ENC Constitution, and that the procedures for handling complaints would also be included in the Constitution going forward. It would therefore be consistent with current procedures and members' views if agreement of these were added to the list of decisions reserved to Council (as an addition to the list at Part 2, Article 4, paragraph 4.02)

2.4 In order for Town and Parish Councillors to be involved in the complaints process for complaints against councillors from that tier, it is proposed that a Joint Standards Complaints Committee (JSCC) is created to deal with the handling of complaints only. The JSCC would be composed of 6 ENC councillors and 6 Town and Parish councillor Members. The Terms of Reference will be drafted to include the following key points:

- If the Chairman is an ENC councillor then the Vice Chairman must be a Town or Parish councillor or vice versa.
- Hearing Panels will be composed of three councillors on the JSCC from the same tier as the 'complained about' councillor. Any appeal panel would be drawn from the remaining three councillors on the same tier.
- Delegated authority will be given from ENC to the JSCC to enable it to discharge the complaints handling procedures as agreed in the Constitution.
- Election of Town and Parish Councillor representatives would be by nomination from, and then voting by, those Town and Parish Councils who agreed to be bound by the findings of the JSCC.

3.0 Code of Conduct for Councillors

3.1 Further changes have been made to the Draft ENC Code in the light of comments made in the previous round of consultation. The latest version is presented at Appendix 1.

3.2 The key suggestions which have led to proposed changes were on the following paragraphs:

- 1.4 - Further consideration to be given to the wording to include reference to information other than that presented at the meeting.
- 1.6.3 – Final sentence needs clarification that this is about avoiding pre-determination rather than breach of the code
- 1.8(a) insertion of the word "political" in front of impartiality with reference to

officers

- 1.8(c) Confidential information should be used for public benefit and that the current wording precluded this. A possible solution would be to change the wording to not to use confidential information for any purpose unless allowed by law.
- 1.8(e) Concern that not all training takes place at a time when councillors can attend and that training is not compulsory. It was suggested that the wording should reflect the NCALC approach:

"Northants CALC believes that attending training should not be made a legal requirement for councillors but that a culture should be developed in the sector where voluntary training is an expected element of good councillorship."

It was also suggested that there needed to be a general comments at the end of the code that it was there to guide and protect, not restrict, councillors.

3.3 There was general agreement that the final Code should be included in the ENC Constitution and Town and Parish Council Standing Orders, and that councillors from each council should be asked to sign up to the Constitution/Standing Orders as appropriate.

3.4 Other comments of note which require action outside of the draft code were:

- Concern by ENC councillors that the wording of 1.8 (d) did not allow for group meetings to be held on council premises. It is proposed that the Code is not altered but that explicit consent for group meetings which (are aimed at facilitating council business) should be included in the ENC Constitution
- Town and Parish Councillors wished to see a reciprocal Code or Duty for Officers. It is proposed that an adapted and simplified version of the ENC Code for Officers is made available for Town and Parish Councils to build into their Standing Orders as required.
- It was suggested that there should be examples of unacceptable behaviour as a training glossary to Code to indicate what is and is not acceptable.

3.5 As noted in paragraphs 1.3 -1.4, three 'template' codes are expected to be produced by national organisations, which may include text that is considered helpful from an explanatory or legal perspective. It is proposed that the Standards Working Party examine the possible options when they are available and make a final recommendation to the other committees/council.

4.0 Declarations of Interest and withdrawal from debate

4.1 The Scrutiny Committee made no comment about this matter but at the Policy & Resources Committee there was some support for councillors with an interest moving to the back of the meeting room but not leaving the room as it was felt that this could be construed as a breach of respect for those councillors. At the Town and Parish Council event it was recognised that practically it was quite difficult at some Parishes for councillors to wait elsewhere. However they and the Monitoring Officer expressed concern in relation to perceptions of influence and the possibility of legal challenge as a consequence, particularly in relation to regulatory functions. Further legal advice is required on this issue.

5.0 Appointment of Independent Person(s)

5.1 Both ENC Committees accepted the idea of appointment of one independent person plus one in reserve and wanted the current restrictions on residence and non-political party membership requirements to continue.

5.2 It is proposed that the selection of the Independent Person and Reserve should be made by a panel of 3 members of the JSCC, to include the Chairman, Vice-Chairman and one other ENC Councillor. Appointment would then be confirmed by ENC at a Council meeting.

6.0 Dealing with Misconduct Complaints

6.1 In general councillors supported the principle that the new process to be as simple as possible (when compared to the current process), with a right to reply at assessment stage for the 'complained about' councillor. The Policy and Resources Committee also considered it important that the process should also include a right of appeal. The following principles will be included in the draft procedure:-

- a) *Initial Assessment* – The principle of delegation to the Monitoring Officer for receipt of complaints in consultation with the Independent Person was supported but it was felt that the Chairman or Vice Chairman (depending upon which tier council the complaint was about) should also be consulted at the initial assessment stage. It is also proposed that the complained against councillor should be provided with a copy of the complaint and offered the opportunity to provide a written response to be considered at this assessment stage
- b) *Independent Person* -The Independent Person will be required to disclose at both the Initial Assessment and Hearing stage if they have been approached by the complained against Councillor and what advice they provided.
- c) *Hearing Stage* – Specific provision would be made in the Terms of Reference to permit the Independent Person to remain for the discussion which will often be a confidential item because it will involve disclosure of personal information.
- d) *Publication of findings* – Final procedure to be flexible in relation to provision for local publicity arrangements for findings of breach/sanction as different methods might be effective e.g. in some cases publication in a community newsletter might be the most effective place compared to say Nene Valley News or commercial publication.

7.0 Dispensation Arrangements

7.1 Both ENC committees agreed with the proposals for the granting of dispensations. The Town and Parish councillors asked for a 'model' wording to be produced for inclusion in their standing orders.

8.0 Register of Interests

8.1 There were no comments on the proposals by ENC Committees. However Town and Parish Councillors asked that, in the development of the e-form for the declaration of interests, if possible a single declaration from husband and wife couple councillors be accommodated together with the ability to make one declaration for both town/parish council and ENC. Care should also be taken to avoid possible identity theft e.g. by not publishing signatures.

9.0 Equality and Diversity Implications

9.1 There are no obvious equality implications from the proposals as currently drafted. However if the principle relating to "respect for others" was deleted from the code it could be considered significant in relation to comments and actions by councillors in relation to equality and diversity issues. It should be noted that the approach taken by the Act in relation to standards provisions appears to avoid duplicating the provision of existing legislation in relation to such matters. The Equalities Act 2010 provisions will still apply to the council, and to individual councillors in some instances.

10.0 Legal Implications

10.1 It is clear that the council's constitution and other policies and procedures will have to be amended in order to comply with the provisions of the Localism Act as they come

into force. All proposed changes will be reviewed by a lawyer for legal compliance before being proposed to council in April.

11.0 Risk Management

11.1 In drafting a new Code of Conduct for East Northamptonshire Council this council will have to balance the risks of creating too onerous a code or complaint system with the need to provide a complaint system that meets the requirements for a right to a fair hearing and a code which meets the high public expectations of councillor behaviour but which does not encourage unnecessary complaints e.g. that are tit for tat

12.0 Financial Implications

12.1 At this stage there are no known financial implications arising from the implementation of the standards aspects of the Localism Bill. The remuneration for the new Independent Persons should not be more than the current allowances for Independent Members.

13.0 Corporate Outcomes

13.1 The duty to promote high standards of ethical governance links to the following Corporate Outcomes:

- Employees and members with the Right Knowledge, Skills and Behaviours
- Effective Management – legal compliance

14.0 Recommendation

14.1 That Members consider the contents of this report and comment on proposed way forward, especially in respect of the draft Code of Conduct for Councillors (Appendix 1) and the proposed local assessment procedures (Appendix 2).

[Reason: to inform the further development of the Code and Procedure for presentation to the Scrutiny and Policy & Resources Committees in April]

Legal	Power: Localism Act 2011				
	Other considerations:				
Background Papers: Previous Reports to Standards Board					
Person Originating Report: Sharn Matthews – Monitoring Officer					
Date: 23/1/12					
CFO		MO		CX	

Draft Code of Conduct for East Northamptonshire Councillors

Explanation of colour coding:

- Text in blue is editing information which will be removed from the final version
 - Text in black has previously agreed by Standards Board
 - Changes highlighted in red is suggested following the feedback from Policy and Resources Committee, Scrutiny Committee and Town and Parish Councils event
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Introduction

This Code applies to all Councillors when they act in their role as Councillors of the Council. This Code is a requirement of the Localism Act 2011 and forms part of the Constitution of ENC which all Councillors will follow. This code is based on the seven Nolan¹ principles of public life:

1.1 As a Councillor you are a representative of the Council, and the public and other stakeholders will form a view of East Northamptonshire Council as a result of your actions. As such you must conduct yourself in a manner which is consistent with the Council's duty to promote and maintain high standards of conduct of Councillors.

1.2 Selflessness

As a public figure, your public role as a Councillor may overlap with your personal or professional life and interests. However, as a Councillor you will serve only the public interest and will never improperly confer an advantage or disadvantage on any person. At all times you will act in accordance with the trust that the public is entitled to place in you.

1.3 Integrity and honesty

You will consider your actions carefully to avoid placing yourself in situations where your honesty and integrity may be questioned and will on all occasions avoid improper behaviour or the appearance of improper behaviour.

1.4 Objectivity (in decision making)

You will make decisions on merit, including when making appointments, awarding contracts or recommending individuals for rewards or benefits. **You must approach decisions with an open mind and listen to** ~~You may take account of~~ the views of others **and assess the information presented at the decision making meeting. You must then** , ~~but~~ reach your own conclusions on issues and act **accordingly**. ~~in accordance with those conclusions.~~ **Failure to do so may expose the decision to challenge on the basis of pre-determination.**

1.5 Accountability

Everything East Northamptonshire Council does must be able to stand the test of scrutiny by the public, the media, other stakeholders, and the courts. You are accountable to the public for your actions and the manner in which you carry your

¹ The Committee on Standards in Public Life (the Nolan Committee) recommended in 1996 seven principles of conduct that should underpin the work of public authorities.

responsibilities, and will co-operate fully and honestly with any scrutiny appropriate to your particular office.

1.6 Openness

1.6.1 East Northamptonshire Council strives to maintain an atmosphere of openness throughout the organisation to promote confidence of the public, stakeholders, staff and regulators. You will be as open as possible about your actions and those of the council, and should be prepared to give reasons for those actions.

1.6.2 You will review your Register of Interests (including Disclosable Pecuniary Interests as required by the Localism Act and related regulations) at least annually to ensure ongoing accuracy

1.6.3 You need to reconsider carefully your position before participating in any decisions or activity, especially those relating to regulatory activities such as planning or licensing. Where the decision or activity is so closely tied to your personal or professional life that your ability to make an impartial decision may be called into question you must consider whether you need to declare any additional Disclosable Pecuniary Interests (DPI) or also declare at any relevant meeting any conflict of interest or any circumstance. These will be added to your Register of Interests after the meeting.

~~1.6.3 You need to consider carefully decisions, especially those relating to a permission, licence, consent or registration, where they are so closely tied to your personal or professional life that your ability to make an impartial decision may be called into question. In these circumstances, you must, in addition to any declarations of Disclosable Pecuniary Interests (DPI) required by the Localism Act, also declare at any relevant meeting any conflict of interest or any circumstance not already on your Register of Interests. You must not become involved in the discussions nor must you vote in relation to such matters as this could raise issues as to the validity of the decision.~~

The law says that if you have a DPI you must **not** become involved in the discussions nor must you **vote** in relation to such matters. ~~If you have other interests in the matter as this could raise issues as to the validity of the decision.~~

1.6.4 You must declare any gifts or hospitality valued over £50 (on one occasion or from the same donor within one year) given in respect of your role as a Councillor in your Register of Interests. *(This section assumes DPI regulations do not cover gifts and hospitality)*

1.7 Leadership

You will promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence and avoids bringing your role or the council into disrepute

1.8 Other obligations

In addition to the above principles, you will:

- a) strive to establish respectful and courteous relationships with everyone you come into contact with as Councillors. You will also respect the political impartiality and integrity of the council's statutory officers and its other employees. *(Respect for others – it is anticipated that this Code of Cllrs will be mirrored by an equivalent code or duty for officers)*
- b) uphold the law in relation to the policies of the council and ~~it's~~ ~~council's~~ legal obligations *(Duty to uphold the law)*
- c) not disclose or use confidential information ~~for any purpose other than that provided for by the law. for personal advantage or the advantage of anyone known to you or to the disadvantage or discredit of the council or anyone else~~ *(Confidentiality)*
- d) use those particular council resources provided for the undertaking of council duties in accordance with council policies and not for any other purposes. *(Stewardship)*

1.9 Training

Participation in training and development activities ~~is not a legal requirement to be a Councillor. However this council expects that you will participate, where events are organised at times which do not conflict with your other responsibilities,~~ in induction and other training and development activities ~~as agreed by the Council~~ in order to improve the value of your contribution to council activities and decisions.

~~This code is intended to provide a guide and protection for councillors in carrying out their duties. However,~~ a breach of any part of this code may result in a complaint being made. A complaint will be assessed according to the arrangements outlined in Part 9 of the Council's Constitution.