



East
Northamptonshire
Council

Joint Standards Complaints Committee – 5 December 2012

Activity report of the Monitoring Officer

Purpose of report: This regular report provides a brief update on recent Monitoring Officer activity and implementation of the new standards framework.

1.0 Implementation of the New Standards Framework.

1.1 The majority of the Localism Act standards framework changes came into effect on 1st July 2012. These included:

- New regulations for the declaration of interests, including criminal penalties for non-disclosure of Disclosable Pecuniary Interests (DPIs)
- New Code of Conduct for Councillors to be adopted by all councils
- New process for handling complaints about alleged breach of the code
- Requirement to appoint an Independent Person to advise on allegations
- New arrangements for the granting of dispensations in relation to DPIs

This report will report progress on the local implementation of each of these changes.

1.2 To assist Councillors in understanding the requirements of the new framework, the Monitoring Officer has presented training sessions as follows:

- 2 open sessions for Town and Parish Councillors on 17 July and 4 September 2012 at ENC Offices.
- Irthlingborough Town Council (7 August)
- Benefield Parish Council (13 August)
- Rushden Town Council (18 September).

She also attended related NALC training at Thrapston Town Council (29 September).

1.3 A Members' Briefing was issued in late June for ENC Councillors to highlight the changes ahead. This was followed by presentations before Licensing Committee (3 October) and Council (29 October). A further Members' Briefing is about to be issued reminding members of the changes to the declarations of interest.

1.4 To help with communication with Town and Parish Councillors, the Monitoring Officer has also started periodic briefings for Clerks. Standards issues covered so far have included:

- Arrangements for the website publication of Registers of Interest
- Appointment of the Independent Person
- Elections for the Town and Parish Representatives on this Committee
- Arrangements for granting dispensations
- Sanctions available to this committee following a finding of breach of the code of conduct

2.0 Declarations of Interest

2.1 The Localism Act abolished the concepts of prejudicial and personal interests and replaced them with two new types of interest:

- Disclosable Pecuniary Interests - defined by regulations issued 8th June 2012
- 'Other' Interests – as defined by the adopted Code of Conduct for each council.

2.2 The majority of the 45 enquiries to the Monitoring Officer, recorded from parish and town clerks and councillors, district councillors and the general public since the Standards Board met for the final time in June 2012, have been seeking advice on

declarations of interests under the new framework. It is clear that further efforts will continue to be required in this area until a fuller understanding of the new framework is embedded.

- 2.3 One area of particular concern has been that of 'other' interests where a councillor declaring such an 'other interest' might also have to withdraw from the debate on grounds of possible bias or pre-determination. Previously in many such instances, such as decisions on a close relative's planning application or where the councillor was twin-hatted and the decision potentially affected the finances of the other council, the councillor would have been unable to participate in the decision making as their interest was considered prejudicial. Now that the scope of DPIs is more limited, it is up to the councillor to make the decision, bearing in mind public perceptions of their position. (It should be noted that it is not possible to grant a dispensation for an 'other' interest so members have to decide whether their interest is such that, in accordance with the ENC Code, they should withdraw from the debate and decision making)
- 2.4 This increased element of responsibility has sometimes been picked up at a late stage before meetings causing advice to be sought at the last minute. This area is a subject that will be covered again in a future Town and Parish Briefing.

3.0 Registers of Interest

- 3.1 The Act requires that all Councillors complete a Register of their DPIs within 28 days of election. A lack of explicit provision in the Act in relation to the introduction of the new framework mid-term has led to some legal argument as to whether existing councillors have to complete their register before they are re-elected. However Ministers have made it clear that the Localism Act was intended to make the statutory disclosure of pecuniary interests transparently clear and that it is "utter nonsense to suggest that Councillors don't have to disclose their pecuniary interests until they are re-elected."
- 3.2 At the time of writing this report there were 74 outstanding Register of Interest forms for Parish Councillors (approx. 23%) and 5 outstanding for District Councillors (approx. 12%). However a number of these may relate to vacancies on councils, not all of which are immediately notified to ENC. We believe that there are currently about 35 vacancies in town and parish councils around the district but the situation changes almost daily.
- 3.3 In October reminder e-mails were sent to the Clerks of those town and parish councils with less than 50% response rate. This prompted more registers to be returned. The Monitoring Officer has also spoken to all ENC councillors who have not yet returned their register. It is now proposed, with the Committee's approval, to send a reminder letter to all Councillors who have not returned their register informing them that this committee has noted the absence of their register and reminding them that non-declaration of DPIs is a potential criminal offence.
- 3.4 The Localism Act requires these registers to be published on the ENC website, together with the relevant town and parish website where the register related to a town or parish councillor. The solution of hosting the registers on the ENC website, with Town and Parish councils providing a link to the appropriate web-page, appears to have worked well and reduced the administrative burden on Town and Parish clerks.
- 3.5 The inability for registers to be completed automatically on line did create significant work in retyping information. However there was a silver lining of the ability to check and harmonise presentation of information which was useful on this initial round of registers. It will be necessary to find a more efficient solution for the 2015 elections. It is hoped that the problem can be resolved via an electronic form which automatically populates the website.
- 3.6 Concerns have been expressed by some councillors at a town and parish level in

relation to the requirement to publish the information on the web-site. Although this was common practice in other council areas, particularly at district and county council levels, it was not previously done in this area at either district or parish council level. The key areas of concern have related to the publication of home addresses and properties owned by councillors and rented out to third parties.

- 3.7 Having made significant progress in the collection and publication of initial registers, a consistent method of notification of additions or changes to the register, outside of the annual refresh, is yet to be clearly established. An e-form is available for submission of changes to the Monitoring Officer but it is unclear whether all councillors will remember that it is their responsibility, not that of the Clerk, to notify changes. This situation will be monitored closely.
- 3.8 The Northamptonshire Monitoring Officers Group has agreed a protocol with Northamptonshire Police for the notification of complaints about DPIs as potentially these could involve criminal offences under the Localism Act.

4.0 Code of Conduct

- 4.1 Under the Localism Act, all councils including Town and Parish councils, must adopt a new code of conduct which must comply with the seven Nolan principles. At the time of writing this report, 29 Town and Parish Councils have adopted a version of the ENC Code and four the NCalc Code. The position at the eight remaining Parish Councils has not been reported to the Monitoring Officer. Enquiries are being made to ensure a complete list is available on the ENC website.

5.0 Dispensations

- 5.1 East Northamptonshire Council adopted a process for the granting of dispensations for DPIs (as Part 9 of the Constitution). At the time of writing only one request for a dispensation has been received by the Monitoring Officer. This is a group request from almost all East Northamptonshire Councillors to enable them to set the Council Tax. (Unlike the previous framework, the current standards framework does not provide a specific exemption to enable councillors to participate in this decision in which all councillors will have a DPI as they are resident in the area.) This dispensation will be granted by the Monitoring Officer on the basis of quorum. She has also advised Town and Parish Councillors to seek a similar dispensation for setting Parish Precepts for the avoidance of doubt as the legal position on this matter is still unclear.
- 5.2 Not all Town and Parish Councils have yet completed their arrangements for the granting of dispensations. Those that have put in place arrangements have either delegated powers to the Clerk or the JSCC or a combination thereof.

6.0 Handing of Complaints

- 6.1 East Northamptonshire Council adopted a 4 stage complaints process as part of the new Standards Framework on 17th July. This process, which is outlined in Part 9 of the Constitution, applies regardless of the Code of Conduct adopted by each council. The process is a simplified form of the previous process, with four stages (Initial Assessment, Investigation, Hearing and Appeal) although it is hoped that as previously very few complaints will go through all four stages.
- 6.2 The Localism Act and associated regulations made no provision for the assessment of any complaints received after 1st July but relating to events prior to that date. Provision was however made for the continued processing of complaints received before 1st July where the process had not been finished. The Monitoring Officer had received one complaint which fell into this category. An assessment sub-committee was held in late June which recommended that the complaint be referred for investigation. The results of this investigation are expected shortly and a verbal update will be given to the Committee on the next steps.

6.3 One new complaint was received in October. It has not been possible to progress this complaint in accordance with Part 9 for a number of reasons, including the fact that the Independent Person was not appointed until the 29th October and the Chair and Vice Chair of this committee until this meeting. The complainant has been informed of the reason for this delay.

7.0 Appointment of Independent Person

7.1 As previously noted, the appointment of the Independent Person did not take place until late October. The position of Independent Person had been advertised in the Nene Valley News in July. This attracted four applications, although one applicant was ineligible for the position under statutory prescription. The remaining candidates were interviewed on 19 October 2012 by the seven ENC representatives on this committee as the Town and Parish Representatives had not then been elected. (It should be noted that six of these councillors were dual hatted and also served on town or parish councils). They recommended to council that Mrs Vivienne Barnard should be appointed as the Independent Person. Mrs Barnard has attended an initial training session with the Monitoring Officer and will attend future meetings of this Committee.

7.2 The panel did not feel able to appoint to the position of Reserve Independent Person. A further advertisement has therefore been placed in Nene Valley News, which has, at the time of writing this report, attracted two new expressions of interest.

8.0 Training

8.1 There will be a short training session after this Committee meeting to look in more detail at the Complaints process and the role of JSCC members in this process.

8.2 In preparation for the new Standards Framework, the Monitoring Officer has attended a number of formal and informal training sessions, including a one day conference at the Law Society in July. On 27 & 28 November she will attend the ACSes Annual Development Forum at which progress in implementing the new Standards Arrangements will be discussed. Verbal feedback of any key issues will be made to this Committee.

8.3 Specialist training and membership of a Forum for Independent Persons is currently being investigated by the Monitoring Officer.

9.0 Equality and Diversity implications

9.1 There are no known equality and diversity implications arising from this activity report

10.0 Legal implications

10.1 This report outlines the progress made to bring the council's arrangements and Constitution into alignment with the Localism Act 2011 and related regulations.

11.0 Risk management

11.1 The actions reported reduce the risk of non-compliance with legislation, particularly the duty to promote high standards of conduct by councillors .

12.0 Financial implications

12.1 There are no known additional financial implications arising from implementation of these changes to date. It is too early to assess whether the overall resources required to process complaints against Councillors will reduce, although it is possible there may be an initial increase until the new arrangements have bedded down.

13.0 Corporate outcomes

13.1 The following corporate outcomes are applicable:

- Effective partnership working
- Effective management
- Community leadership

14.0 Recommendation

14.1 Members are recommended to:

- a) Note the progress made in implementing the new Standards framework in councils across the East Northamptonshire Area
- b) Ask the Monitoring Officer to write to all local Councillors who have not yet returned their Register of Interests noting their failure to register Disclosable Pecuniary Interests and reminding them that this is a potential criminal act.

[Reason: demonstration of the commitment to implement the duty to promote and maintain high standards of conduct]

Legal	Power: Localism Act 2011				
	Other considerations:				
Background Papers: None					
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Date: 26 November 2012					
CFO		MO		CX	

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