

Joint Audit and Governance Committee



South and Vale Audit and Governance Sub-Committees



Report of Monitoring Officer

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To: JOINT AUDIT AND GOVERNANCE

COMMITTEE

SOUTH AND VALE AUDIT AND GOVERNANCE

SUB-COMMITTEES

DATE: 21 March 2016

Review of code of conduct complaints procedures

Recommendations

The Joint Audit and Governance Committee is asked to recommend the South and Vale Audit and Governance Sub-Committees to:

- (a) appoint (on an ongoing basis until May 2019) complaints panels comprising three members of the sub-committee or their appointed substitutes to determine code of conduct complaints referred by the monitoring officer;
- (b) appoint each member or substitute of the sub-committee to serve on any complaints panel which is convened so as to include her or him in its membership;
- (c) agree that wherever possible, a panel should comprise the chairman or vice-chairman of the sub-committee plus two other members of the sub-committee, but that this should not affect the principle that any three members of the sub-committee will constitute a properly appointed panel

- (d) authorise the head of legal and democratic services to convene panels to consider code of conduct complaints having regard to members' availability and eligibility to take part;
- (e) adopt the revised procedures for dealing with code of conduct complaints set out in appendix one to this report with effect from 1 April 2016 (and subject to further review in 2019),
- (f) authorise the monitoring officer to make minor amendments to the procedures including minor or consequential amendments required for clarification, consistency and compliance with the councils' style guide;
- (g) note the revised document entitled *Code of conduct complaints: fact sheet* set out in appendix two to this report that will continue to provide information for members of the public when making code of conduct complaints.

Purpose of Report

1. The purpose of this report is to ask the Joint Audit and Governance Committee to consider the arrangements for panels to determine code of conduct complaints referred by the monitoring officer and revised procedures for and information on dealing with code of conduct complaints and to make recommendations to the audit and governance sub-committees.

Strategic Objectives

2. High standards of conduct underpin all of the council's work and the achievement of all its strategic objectives.

Background

3. The Localism Act 2011 imposes a duty on the councils to promote and maintain high standards of conduct by councillors and co-opted members. It also requires the council to adopt both a code of conduct and arrangements for the handling and the determination of allegations of breaches of the code. The councils adopted the current code of conduct at their meetings in May 2012 and it came into effect on 1 July 2012. At that time we advised town and parish councils across the district that they should adopt a code of conduct by 1 July 2012 and recommended that they adopt the district council's code. In May 2012 the councils also designated the monitoring officer as the proper officer for receipt of code of conduct complaints.
4. The Joint Audit and Governance Committee has responsibility for having an overview of the standards of conduct framework for councillors, any co-opted members and parish councillors. However, each council's audit and governance sub-committee has responsibility for dealing with that council's code of conduct complaints about councillors that the monitoring officer considers it inappropriate for officers to deal with. The terms of reference of the sub-committees empower them to appoint complaints panels comprising three eligible members of the sub-committee to determine code of conduct complaints referred by the monitoring officer. Panels will make decisions on such complaints except where the chairman or vice-chairman of the sub-committee considers that a complaint merits

consideration by the full sub-committee. The sub-committees themselves therefore need to appoint complaints panels and adopt procedures for dealing with code of conduct complaints. However, this report is also being presented to the Joint Audit and Governance Committee so that it can have a joint discussion and recommend a consistent approach to each sub-committee for adoption.

Code of conduct

5. The current councillors' code of conduct was introduced in 2012 following a change in the legislation on councillors' interests. At that time, the county council and all the Oxfordshire districts adopted the same code of conduct which only includes an obligation to declare disclosable pecuniary interests and not non-financial interests. Most parish councils in Oxfordshire adopted the same code too, with a few exceptions.
6. Training on the code of conduct was provided for all district councillors and for parish clerks and chairmen in autumn 2015.
7. The Oxfordshire Association of Local Councils and the monitoring officers continue to receive requests for advice on non-financial interests and potential conflicts of interests. The Oxfordshire Monitoring Officers Group therefore recently considered whether to broaden the code of conduct to include other interests. They decided not to do so at the present time for several reasons. The legislation now only refers to disclosable pecuniary interests for which there are criminal sanctions. There are limited sanctions available to enforce other interests through the code of conduct and the complaints procedures. They all agree that it is important to keep a common code across the county, for the benefit of dual and triple-hatted councillors. They also recognise the significant work involved in adopting a revised code, particularly across all parish councils.
8. Instead the Oxfordshire Monitoring Officers Group produced an advice note on bias, predetermination and conflicts of interest and this was circulated to all district councillors and all parish councils on 24 February 2016. The note contains advice and guidance for councillors and parish clerks. It does not form part of the code of conduct itself and does not need to be formally adopted. We encouraged councillors and parish clerks to continue to seek advice from the monitoring officer as and when they need to.
9. The Oxfordshire Monitoring Officers Group will review the code of conduct again in a year's time and have invited any views or feedback on the code or the advice note, to be sent to the monitoring officer so that they can feed them into the next review.

Complaints procedures

10. The current procedures were adopted in 2012 and are due for review. They are comprehensive in that they set out how we will deal with a complaint from its receipt right through to any hearing that could arise if a breach of the code of conduct was identified through investigation
11. Alongside the procedure we have developed a fact sheet that will appear on the website. The fact sheet answers some other questions that the public may have and contains a briefer version of the procedure.

12. Proposed revised procedures and a revised fact sheet are attached at appendix one and appendix two of this report.
13. The procedures have generally worked well and there are only two substantive points that the monitoring officer suggests for review.
14. In 2015, a code of conduct complainant asked for their identity to be kept confidential from the councillor who was the subject of the complaint. However, at the point that the decision notice was issued, this was overlooked and the complainant's identity was revealed to the councillor. This led to a corporate complaint. The complaint form states that in the interests of fairness and natural justice councillors who are the subject of a complaint have the right to know who has made the complaint. We also say that we are unlikely to withhold a complainant's identity or the details of the complaint unless there is good reason. The complaint form gives the example of a real possibility of intimidation by the subject of the complaint. In the circumstances of the case, the monitoring officer was not satisfied that the request for confidentiality should have been granted but did acknowledge that we should have given the complainant the option of withdrawing the complaint before issuing the decision notice. For that reason, the complaint was founded and a full apology offered for the fact that did not happen. This was an unintended error on our part and arose because the request was overlooked at the point the decision notice was issued. As a result of what has happened, we propose to amend our procedures for the future. If we receive a request for confidentiality from a complainant, then we will deal with that request as a preliminary point and respond to it before proceeding to make and issue a decision on the complaint. This will ensure that a complainant has the option to withdraw the complaint at that stage if the request is refused.
15. Also in 2015, a complaint was made to the Ombudsman about a code of conduct complaint. Although the Ombudsman decided to take no further action on the complaint, the monitoring officer did agree to act on an observation by the Ombudsman that all complaints should be acknowledged and information given to the complainant about what would happen next and when. Procedures have been put in place to ensure that this happens, tailored to the circumstances of each case.
16. The Joint Audit and Governance Committee is asked to review the revised procedures and to recommend the sub-committees to adopt them. It is suggested that the revised procedures are adopted with effect from 1 April 2016 and that they are subject to review in 2019 unless significant changes to the code of conduct framework require a new procedure in the meantime.

Financial Implications

17. The cost of implementing revised procedures for dealing with code of conduct complaints will be met from existing budgets.

Legal Implications

18. The council must have in place arrangements for dealing with code of conduct complaints as required in the Localism Act 2011.

Risks

19. There are no immediately identifiable risks in adopting these procedures. Having clear arrangements in place for handling code of conduct complaints and following them reduces the risk of corporate complaints or complaints to the Ombudsman about code of conduct matters.

Conclusion

20. The councils must have in place procedures for dealing with code of conduct complaints to comply with legislation. The Joint Audit and Governance Committee, as the committee responsible for having an overview of the standards of conduct framework is asked to make recommendations to the audit and governance sub-committees on the appointment of complaints panels and on revised procedures for dealing with code of conduct complaints.

Background Papers

None