

Audit and Governance Committee

Meeting to be held on Monday, 25 September 2017

Electoral Division affected: None;

Standards and the Code of Conduct

(Appendix 'A' refers)

Contact for further information:

Josh Mynott, Tel: (01772) 534580, Democratic and Member Services Manager,
josh.mynott@lancashire.gov.uk

Executive Summary

The County Council is required to have in place a code of conduct for county councillors and arrangements for investigating complaints. This report sets out the arrangements in place at Lancashire County Council.

Recommendation

That the Audit and Governance Committee note the report and comment as appropriate.

Background and Advice

In May 2012 the Full Council agreed a new Code of Conduct for Members in accordance with provisions in the Localism Act 2011 which effectively brought to an end the previous standards regime. In July and October 2012 the Full Council refined the Code to incorporate further government guidance and regulations. This Code has been in place since that time.

The Code, attached at Appendix 'A', includes the following elements:

1. Expected standards of behaviour, based on the Nolan Principles of Public Life
2. Declarations of Interest
3. Gifts and Hospitality

The Code applies to all members and co-opted members of the council.

Legislative Context

The current standards regime is based on the requirements of the Localism Act 2011. This replaced the previous regime which was perceived by some, including the government of the time, as bureaucratic and encouraging petty or vexatious complaints. It was certainly the case that the approach to handling complaints placed

disproportionately onerous obligations on councils and councillors in the face of often very minor, or clearly mischievous, complaints

The new rules sought to simplify arrangements for investigating complaints, notably through the abolition of the Standards Board for England and through giving each local authority responsibility for setting its own code of conduct and making and administering the arrangements for upholding the code.

In support of the new legislation, the government issued guidance on pecuniary and non-pecuniary interests and the investigation of complaints under the code.

The new arrangements significantly strengthened the punishments relating to a councillor's failure to declare a pecuniary interest or participation in decision in which he or she had a pecuniary interest, which became a criminal offence carrying a "Level 5" fine (currently unlimited), and a 5 year suspension from holding public office.

However, in relation to any other breaches of the Code, either in relation to non-pecuniary interests, gifts and hospitality or the behavioural requirements, the range of sanctions available to councils was greatly reduced, effectively to nothing.

Code of Conduct Complaints

Full Council agreed arrangements for handling complaints at its meeting in October 2012. In brief, the process adopted by the County Council requires the Monitoring Officer (MO) to consider allegations that a councillor has failed to comply with the Code of Conduct and decide:

- Whether the complaint is frivolous, vexatious or without merit and should be dismissed with no further action, or
- That the complaint does not warrant a formal investigation and that informal resolution is possible by way of action such as an apology, or
- That the complaint appears to amount to a breach of the Code and merits an investigation, the outcome to be reported to the Conduct Committee

Councillors about whom a complaint is made are provided with the details of the complaint and complainant, unless there is a compelling reason why this should not be the case, and invited to submit any representations which they may wish to make.

If a complaint is subject to investigation, the councillor will be provided with the details of one of the Council's "Independent Persons", whose views they may seek. If the matter is referred by the MO to the Conduct Committee, then one of the other Independent Persons will attend the meeting, and the committee are required to take their views into account before reaching a decision.

A councillor alleged to have breached the code would be invited to attend the Conduct Committee meeting to give their views.

There is no right of appeal against the MO's decision or that of the Conduct Committee.

Complaints about breaches of the rules on pecuniary interests are a criminal matter and should be reported to the police.

Sanctions

A crucial difference between the old Standards regime and current arrangements is in the sanctions available to a local authority in the event of a breach of the code. The old regime allowed councils to impose a range of punishments, up to and including a suspension as a member of the local authority for up to 6 months.

Other than the new criminal sanctions for breaches of rules around pecuniary interests, the new rules do not specify in legislation or guidance any sanctions that may be imposed for breaches of the code. This means that whilst a local authority may include sanctions within its scheme for handling complaints, there is no legislative basis or support which can be relied on in the event of challenge. Case law has indicated that relatively minor sanctions, such as requiring a councillor to undergo specified training, are likely to be deemed reasonable in law. However, serious sanctions, such as suspension, withdrawal of facilities or withdrawal of allowances, would certainly be open to challenge and are almost certainly unsustainable.

For this reason, the only sanction that exists in the Lancashire scheme is censure and requiring a councillor considered to have breached the Code to apologise, with the Conduct Committee having the option to specify the terms of the apology. There is, however, no further sanction should the councillor refuse to comply with the Conduct Committee's decision that they should apologise.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

The County Council is required to operate a code of conduct for members. The statutory requirements are set out in the main body of the report.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Tel
-------	------	-------------

N/A

Reason for inclusion in Part II, if appropriate

N/A

