

PARISH COUNCIL LIAISON COMMITTEE	AGENDA ITEM No. 3
30 AUGUST 2012	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor David Seaton, Cabinet Member for Resources	
Contact Officer(s):	Helen Edwards Solicitor to the Council & Monitoring Officer Kim Sawyer Head of Legal Services	Tel. 452361

MEMBER COMPLAINTS PROCESS

RECOMMENDATIONS

Parishes are requested to:

1. Adopt a code and notify the Monitoring Officer of the Code and the date of adoption
2. Review the standard form for registration of interests making amendments for any additional interests as required by the parish Code and send a copy to the Monitoring Officer
3. Request members to complete the register of interests form as soon as possible after the adoption of a code and within a maximum period of 28 days from the adoption
4. Ensure that parish clerks have checked that the completed forms have been signed and dated and forward them to the Monitoring Officer
5. Advise the Monitoring Officer of any parish council website address
6. Arrange for a link to appear on the parish council website once the register has been published by the Monitoring Officer
7. Consider if the parish councils wish to nominate a member(s) to be considered as a parish council representative on the hearings panel of the Audit Committee (co-opted, non-voting) and submit any nominations to the Monitoring Officer for consideration by the City Council

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Committee by the Monitoring Officer to explain the impact of the Localism Act 2011 upon the process for dealing with complaints against members of parish councils

2. PURPOSE AND REASON FOR REPORT

- 2.1 The national Standards regime introduced by the Local Government Act 2000 ended on 30 June as a result of regulations made under the Localism Act 2011. The national body, Standards for England, had ceased taking new work on 31 January and had been formally abolished on 31 March.
- 2.2 The model code of conduct also ceased to have effect on 30 June. Until the transitional regulations were made on 6 June it had been understood that the model code would continue to apply until councils had adopted a new one. This formed part of the NALC advice. However, that is not the case and no code of conduct will be in force for a parish council until it has adopted one.
- 2.3 The Localism Act still requires parish councils to adopt a code of conduct for members and co-opted members.

3. The new regime

The Code

- 3.1 There is no prescribed form of code, although it should be based on the seven principles of standards in public life (a slight variation on the original Nolan principles). The Local Government Association circulated a template for a “light touch” code, as did the Department for Communities and Local Government. NALC considered that parish councils would find a more detailed code more helpful and have issued one accordingly. It is also open to parish councils to consider adopting the code of conduct of the principal council i.e. that of Peterborough City Council (PCC), attached at appendix 1.
- 3.2 Principal authorities i.e. PCC, must put arrangements in place to deal with complaints that members have failed to comply with the relevant code of conduct. This may include establishing a committee. Responsibility for hearing member complaints was given to the Audit Committee at a meeting of the Council in July 2012. As with the former regime, PCC will handle complaints, although any sanction for a breach will be a matter for the parish council.
- 3.3 Delays in the making of regulations defining “disclosable pecuniary interests” and dealing with transitional matters allowed little time for rigorous examination of the terms of the Code if it was to be in place as soon as possible after 1 July. The Council therefore agreed that the Code will be the subject of further consideration within the next 12 months and a further report to the Council.
- 3.4 The Act provides that the code shall apply to members only when they are acting in their official capacity, including as a representative of the Council. The provision in the old code which extended this to cover situations where a member was giving the impression of acting as a councillor no longer applies.
- 3.5 The substantive terms of the PCC Code regarding behaviour broadly retain the types of conduct covered by the old code.

Interests

- 3.6 The major change of substance brought about by the legislation relates to the registration and disclosure of interests. The concepts of personal and prejudicial interests have been replaced by the new term of disclosable pecuniary interests (DPI). DPI’s are defined by regulation rather than being a matter of local discretion. The important difference now is that where a member has a DPI it is a criminal offence to fail to register it, or to fail to disclose it at a meeting (unless it is already registered), or to participate in relevant business (unless a dispensation has been granted). The maximum fine at present is £5,000.
- 3.7 DPIs differ from prejudicial interests in that they apply to the interests of both the member and those of his/her spouse or partner (or person whom they live with as a spouse or civil partner) of which the member is aware. All these interests must be registered although no distinction has to be made between those of the member and the spouse or civil partner, PCC remain the registration authority and therefore all members must register their interests with the Monitoring Officer.
- 3.8 DPIs are broader than prejudicial interests because a member has a DPI even if there is no likelihood that it might prejudice the member’s perception of the public interest. So a decision which has only a minimal impact on a member’s property or employer can trigger a criminal offence if the rules are not observed.
- 3.9 DPIs are narrower in that they apply only to very defined categories of interest and omit reference to matters likely to affect the wellbeing or financial standing of the member or his/her family and friends.

- 3.10 The NALC code differs quite substantially from the PCC code in that PCC has not chosen to adopt any of the additional interests set out in appendix B of the NALC model code
- 3.11 One provision in the NALC code which is also not in the PCC Code is paragraph 13, which requires the disclosure of an interest when an item of business affects family or friends.
- 3.12 Similarly to the old regime, a member may seek to class an interest as being sensitive and therefore withhold publication of that part of the Register. This applies to an interest which could lead to the member, or a person connected with the member, being subjected to violence or intimidation. If the Monitoring Officer agrees that this is the case, the interest still has to be registered, but the public version will not reveal the details. Disclosure at a meeting need state merely that the member has a DPI or other interest in the matter.

Arrangements for dealing with complaints

- 3.13 The arrangements for dealing with complaints are attached as appendix 2. The intention is that this process be less bureaucratic than the old regime. The Monitoring Officer has more flexibility in dealing with matters in the first instance. Members who are the subject of a complaint will be advised at an early stage. Advice and support for members who are the subject of complaints will be available from an Independent Person to be appointed by PCC. Unresolved existing complaints will be concluded under the new arrangements, although the sanctions of suspension and disqualification are no longer available.
- 3.14 The Audit Committee will hear any complaints where an investigation resolves that there may have been breach of the code. One main change to the Audit Committee is that there are no longer any parish council representatives on the hearing panel. Parish members are asked to indicate if they would wish to appoint any parish council representatives to the hearings panel (a sub-committee of Audit Committee). Parish Council members can only be non-voting co-optees to the panel as the Localism Act does not permit parish council representatives with a right to vote.
- 3.15 One of the issues currently being considered in consultation with CPALC is whether parish councils ought to meet the cost of any investigation resulting from a complaint made to the Monitoring Officer. Parish councils are invited to give their views regarding this proposal which will be considered by the City Council at its review meeting of these arrangements

Register of interests

- 3.16 The Monitoring Officer is required to establish and maintain a register of interests for PCC members and those of parish councils. A copy the registers must be available for public inspection, as was the case previously. It should be noted that the register of interests now has to be published on the RCC website and on a parish council website if it has one. Members' signatures should be redacted from the web version.
- 3.17 A pro forma for the registration of interests is attached as appendix 3 although this may have to be amended if an alternative Code to the PCC code is adopted by the parish i.e. if additional interests are required by the code this will have to be reflected in the registration form. Parish councils will need to take advice from their clerks regarding the adoption of the code and the registration form. A newly-elected member will have 28 days in which to return the completed form, but it would be helpful if existing councillors were urged to complete them on a shorter timescale.

Dispensations

- 3.18 In certain circumstances members may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because they have a DPI. Provided Councillors act within the terms of their dispensation there is no breach of the Code of Conduct or the law.
- 3.19 Any Councillor who wishes to apply for a dispensation must make an application in writing and submit it to the proper officer of the parish council (ie. the parish clerk) as soon as possible before the meeting which the dispensation is required. Applications may also be

made at the parish council meeting itself (if parish councils have a standing item on the agenda to deal with dispensation requests) and the nature of the interest has only become apparent to a councillor at the meeting itself. A suggested form for requesting a dispensation is attached at appendix 4

4. CONSULTATION

4.1 This report has been sent to each of the parish councils within Peterborough.

5. REASONS FOR RECOMMENDATIONS

These recommendations are made to accord with statutory requirements of the Localism Act 2011

6. ALTERNATIVE OPTIONS CONSIDERED

There are no alternative options to be considered although parish council do have discretion regarding the form of code they adopt

7. IMPLICATIONS

Any legal implications or financial implications have been dealt with in this report

8. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

Localism Act 2011

NALC template code of conduct

Reports to Peterborough City Council on the member complaints system (April & July 2012)

9. Appendices

Appendix 1 – PCC Code of Conduct

Appendix 2 – Arrangements for dealing with complaints

Appendix 3 – Proforma register of interests form

Appendix 4 – Proforma for requesting dispensation

This page is intentionally left blank