

Supporting Papers for Item 4.1 / 4.2 received from the SPC Monitoring Officer

Although Steyning Parish Council may adopt their own code it still has to comply with their duty under the Localism Act 2011. As you are aware the Local Government Ethical Standards undertook a review by the Committee on Standards in Public Life (CSPL).

They put forward a list of 26 recommendations which are being made to government and to specific groups of public officeholders. They recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling. We are awaiting news of progress with regard to the legislation changes.

These recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. The recommendations introduce new sanctions to include suspension of councillors and another recommendation put forward is to amend Section 27(3) of the Localism Act 2011 to state that parish councils **must** adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. This is in the belief that a model code of conduct would create consistency across England and reflect the common expectations of the public regardless of geography or tier.

Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils so we all welcome the legislative changes, but they are not here yet.

As the law stands only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act. The CPSL concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but **do not have the authority to investigate and enforce that code.** This is borne out in case law following *Taylor v Honiton Town Council*, a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority through the Monitoring Officer.

It is with this in mind and the research that my colleagues and I have undertaken that my advice would be that you cannot write into your code of conduct and add sanctions that you are unable to enforce and sanctions that are not available by law.

With regard to social media you cannot give a blanket interpretation as to when a Councillor is acting in their capacity as a councillor. This is open to interpretation and taking away the ability to post on social media as a private individual is a fundamental breach of a person's freedoms and human rights and therefore you would be stepping onto very dangerous territory if you wrote that into your Code of Conduct. It may be helpful to have some guidance as an addendum to the code and within your social media policy.

The advice I generally give and the criteria / threshold that I look at with regard to a member acting in their capacity is;

- *A member is acting in his or her capacity as a member when he is clearly conducting authority business, when attending authority meetings and functions, and when dealing with constituents as ward councillor.*
- *A member is probably acting in his or her capacity as a member when blogging, tweeting, commenting in newsletters and the like and the member uses the word "councillor" or equivalent in a heading or by signature.*
- *A member is probably acting in his or her capacity as a member when he or she makes use of information obtained as a member, especially if the information could not have been obtained elsewhere.*