



Lewes District Council

To all Members of the Standards Panel

A meeting of the **Standards Panel** will be held in the **Telscombe Room, Southover House, Southover Road, Lewes** on **Friday, 03 February 2017** at **10:00** which you are requested to attend.

Please note the venue for this meeting which is wheelchair accessible and has an induction loop to help people who are hearing impaired.

This meeting may be filmed, recorded or broadcast by any person or organisation. Anyone wishing to film or record must notify the Chair prior to the start of the meeting. Members of the public attending the meeting are deemed to have consented to be filmed or recorded, as liability for this is not within the Council's control.

03/02/2017

Catherine Knight
Assistant Director of Legal and Democratic Services

Agenda

- 1 Election of Chair of the Standards Panel for this meeting**
- 2 Apologies for Absence/Declaration of Substitute Members**
- 3 Declarations of Interest**
Disclosure by councillors of personal interests in matters on the agenda, the nature of any interest and whether the councillor regards the interest as prejudicial under the terms of the Code of Conduct.
- 4 Investigation into Complaint against Councillor R Robertson, Lewes District Council (page 3)**
To consider the Report of the Assistant Director of Legal and Democratic Services (Report No 32/17 herewith).
- 5 Informal consultation with the Panel over the proposed resolution of a Code of Conduct matter**

For further information about items appearing on this Agenda, please contact Jen Norman at Southover House, Southover Road, Lewes, East Sussex BN7 1AB Telephone 01273 471600.

Distribution: Councillors M Chartier, I Linington and T Rowell

Agenda Item No: 4 **Report No:** 32/17
Report Title: Investigation into Complaint against Councillor R Robertson, Lewes District Council
Report To: Audit & Standards Sub-Committee (Hearings Panel) **Date:** 3 February 2017
Report By: Assistant Director of Legal and Democratic Services
Contact Officer(s)-
Name(s): Catherine Knight
Post Title(s): Assistant Director of Legal and Democratic Services
E-mail(s): catherine.knight@lewes.gov.uk
Tel No(s): 01273 471600

Purpose of Report:

To support a hearing by the Hearings Panel in the matter of a complaint made about the conduct of Councillor Robbie Robertson of Lewes District Council

Officers Recommendation(s):

- 1 To receive and note the report of the Investigating Officer set out in Appendix C.
- 2 To determine whether Councillor Robbie Robertson's conduct, in relation to the complaint set out in Appendix B, was such as to breach Lewes District Council's Code of Conduct for Members.
- 3 If the Panel determines that Councillor Robbie Robertson breached the Code of Conduct, to determine what, if any, sanction to apply or recommend.

Reasons for Recommendations

- 1 To comply with the adopted Hearings Procedure of Lewes District Council.

Information

2

- 2.1 A complaint was received from Lewes District Councillor Sarah Osborne about the conduct of Councillor Robbie Robertson of Lewes District Council. The allegations were that Councillor Robertson had breached Lewes District Council's Code of Conduct for Members.
- 2.2 A copy of Lewes District Council's Code of Conduct for Members is at Appendix A. A copy of the complaint received is at Appendix B. A copy of the Investigating Officer's Report is at Appendix C.

Financial Appraisal

- 3** The Panel's determination of the complaint and decision (if required) on the application of any sanction are unlikely to involve any significant expenditure by the Council.

Legal Implications

- 4** The statutory basis for standards of conduct by members of local authorities is Part 1, chapter 7, of the Localism Act 2011. The relevant provisions of that scheme are specified in the body of the Report.

Date of legal advice: 23.1.17. Legal ref: 005932-LDC-OD

Equality Screening

5

There are no equality issues associated with this report.

Appendices

- 6** Appendix A: Lewes District Council – Code of Conduct for Members
Appendix B: Complaint against Councillor Robertson
Appendix C: Investigating Officer's Report

PART 5
CODES AND PROTOCOLS

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Code of Conduct of Members of the Council (including Guidance for Members on the Code of Conduct and its interpretation)	L1
Register of Interests of Members and Co-opted Members of the Council	M1
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Part 5

On their election or co-option to the Lewes District Council, members are required to sign an undertaking to comply with the authority's Code of Conduct.

The Code of Conduct, adopted by the authority on 19 July 2012 is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

PART 1

GENERAL PROVISIONS

1 Introduction and Interpretation

- (1) The Code applies to you as a member of the authority, when acting in that capacity.
- (2) This Code is based upon seven principles fundamental to public service, which are set out in Appendix 1. You should have regard to these principles, they will help you to comply with the Code.
- (3) If you need guidance on any matter under this Code you should seek it from the authority's monitoring officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have a disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's monitoring officer.
- (5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding –
 - (a) whether to take action in relation to you, and
 - (b) what action to take.
- (6) In this Code –

“authority” means Lewes District Council

“Code” means this Code of Conduct

“co-opted member” means a person who is not a member of the authority but who –

- (a) is a member of any committee or sub-committee of the authority; or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority.

and who is entitled to vote on any question that falls to be decided at any meetings of that committee or sub-committee.

“meeting” means any meeting of

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees.

“member” includes a co-opted member.

“register of members’ interests” means the authority’s register of members’ pecuniary and other interests established and maintained by the authority’s monitoring officer under section 29 of the Localism Act 2011.

2 Scope

- (1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you –
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority.

and references to your official capacity are construed accordingly.

- (2) this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) Where you act as a representative of your authority –
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or

- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3 General Obligations

- (1) You must treat others with respect.
- (2) You must not –
 - (a) do anything which may cause your authority to breach any of its equality duties (in particular set out in the Equality Act 2010);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be –
 - (i) a complainant;
 - (ii) a witness; or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4 You must not –

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of the person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is –
 - (a) reasonable and in the public interest; and

- (b) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
- 5** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6** You –
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
 - (b) must, when using or authorising the use by others of the resources of your authority –
 - (i) act in accordance with your authority’s reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7** (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by –
 - (a) your authority’s chief finance officer; or
 - (b) your authority’s’ monitoring officer;where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

INTERESTS

8 Personal Interests

- (1) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.
- (2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests –
 - (a) the authority may deal with the matter as mentioned in paragraph 1(5) and
 - (b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).
- (3) You have a personal interest in any business of your authority where either –
 - (a) it relates to or is likely to affect –
 - (i) any body of which you are a member or in the position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body –
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or are in a position of general control or management;
 - (iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50; or
 - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of

authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

- (4) In sub-paragraph (3)(b), a relevant person is –
- (a) a member of your family or a close associate; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (3)(a)(i) or (ii).
- (5) Subject to sub-paragraph (6), you have a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 in any business of your authority where (i) you or (ii) your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) has any interest within the following descriptions:

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.

Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions:

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner, or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

"director" includes a member of the committee of management of an industrial and provident society;

"land" includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

"M" means the person M referred to in section 30 of the Localism Act 2011;

"member" includes a co-opted member;

"relevant authority" means the authority of which M is a member;

"relevant period" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) of the Localism Act 2011;

"relevant person" means M or any other person referred to in section 30(3)(b) of the Localism Act 2011;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

- (6) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that your partner has the interest.

9 Disclosure of Personal Interests (See also Part 3)

- (1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (3) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.
- (4) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (5) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

10 Prejudicial Interest Generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either –
 - (a) the interest is a disclosable pecuniary interest as described in paragraph 8(5); or
 - (b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

- (2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business –
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of –
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11 Interests Arising in Relation to Overview and Scrutiny Committees

You also have a personal interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where –

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12 Effect of Prejudicial Interests on Participation

- (1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority –
 - (a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held –
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;

unless you have obtained a dispensation from your authority's monitoring officer or standards committee;
 - (b) you must not exercise executive functions in relation to that matter; and
 - (c) you must not seek improperly to influence a decision about that matter.
- (2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- (3) Where you can have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

Part 3

REGISTRATION OF INTERESTS

13 Registration of members' interests

- (1) Subject to paragraph 14, you must, within 28 days of –
 - (a) this Code being adopted by the authority; or
 - (b) your election or appointment to office (where that is later), register in the register of members' interests details of –
 - (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
 - (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(b)(i) or (1)(b)(ii) or any change to any personal interest registered under sub-paragraphs (1)(b)(i) or (1)(b)(ii), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

14 Sensitive Information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in the register of members' interests.
- (3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

15 Dispensations

- (1) The Audit and Standards committee, or any sub-committee of the Audit and Standards committee, or the monitoring officer may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Standards committee, its sub-committee, or the monitoring officer -
 - (a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
 - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's executive; or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

Note from Monitoring Officer: Councillors are reminded that quite apart from the Code of Conduct, section 106 of the Local Government Finance Act 1992 restricts the rights of Councillors who are two months or more in arrears with their council tax payments. Any such member must disclose the fact and must not vote at any meeting on decisions being taken which might affect the level of the council tax or the arrangements for administering it. Failure to comply is a criminal offence.

CODE OF CONDUCT OF MEMBERS

As a member or co-opted member of Lewes District Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

The Seven Principles of Public Life

Selflessness

- 1 Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Integrity

- 2 Members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.

Objectivity

- 3 Members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

- 4 Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

- 5 Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Honesty

- 6** Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

- 7** Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.



Lewes District Council

COMPLAINT FORM

1. Your Details

Please provide us with your name and contact details.

Title:	Cllr
First Name:	Sarah
Last Name:	Osborne
Address:	Chapel farmhouse, Wickham Lane, Cocksbridge, East Sussex, BN8 4PT
Daytime Telephone:	07986 776 105
Evening Telephone:	07986 776 105
Mobile Telephone:	07986 776 105
Email Address:	sarah.osborne2@lewes.gov.uk

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the Councillor(s) you are complaining about;
- the Monitoring Officer of the authority; and
- the Parish or Town Clerk (if applicable).

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal

with it. If you have serious concerns about your name or details of your complaint being released to the Member about whom it relates, please complete Section 5 of this form.

Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent person of Lewes District Council
- Member of Parliament
- Local Authority Monitoring Officer
- Other council officer or authority employee
- Other (please specify)

2. Making Your Complaint

Please provide us with the name of the Councillor(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First Name	Last Name	Council or Authority Name
Cllr	Robbie	Robertson	Lewes District Council

3. Date of Complaint

Please inform us of any relevant dates concerning your complaints (e.g. when the incident occurred, any relevant meetings dates etc).

Comments made by Cllr Robbie Robertson quoted in The Argus article 27/10/16

4. Please explain in this section (or on separate sheets) what the Councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when it decides whether to take any action on your complaint. For example:-

- You should be specific, wherever possible, about exactly what you are alleging the Councillor said or did. For instance, instead of writing that the Councillor insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

By making the comments that were quoted in an article in The Argus today (link provided above) Cllr Robbie Robertson has conducted himself in a manner which could reasonably be regarded as bringing his office and the authority into disrepute.

http://www.theargus.co.uk/news/14826460.Council_tax_payment__last_priority__for_councillor_among_16_pursued_over_bills/#

5. Only complete this next section if you are requesting that your identity is kept confidential.

In the interests of fairness and natural justice, we believe Councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:-

- You have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed.
- You are an officer who works closely with the subject Councillor and you are afraid of the consequences to your employment or of losing your job if your identity is discovered.
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed. In these circumstances the Audit and Standards Committee may request medical evidence of your condition.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

6. Additional Help

Complaints must be submitted in writing. This includes electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let me know as soon as possible.

This information can be made available in **large print**, on audio tape or disk, or in another language upon request. Contact us on 01273 471600 or email jennifer.norman@lewes.gov.uk.

Please return your form to:

The Monitoring Officer
Lewes District Council
Southover House
Southover Road
Lewes
BN7 1AB

Email complaints marked for the attention of “The Monitoring Officer” can be sent to jennifer.norman@lewes.gov.uk .

FINAL Report – 13/01/17

Report in relation to an investigation conducted under Chapter 7 of the Localism Act 2011 into a complaint about Councillor Robbie Robertson, a member of Lewes District Council

Introduction

I am the designated Monitoring Officer for Lewes District Council. I have received a complaint from Cllr Sarah Osborne of Lewes District Council against Cllr Robbie Robertson of the same Council.

Allegation

Cllr Robertson fell into arrears with his Council tax payments, a matter that became known to the local press. It is alleged that when questioned about the matter Cllr Robertson made certain comments to the press which were flippant, attempted to trivialise the matter, undermined the Council's position as the Council tax collection authority and brought both his own office as a councillor and the reputation of the district council into disrepute.

Finding

I find that Councillor Robertson did make comments to the press which were substantively consistent with those comments attributed to him in the Argus on 27 October 2016. Is such conduct capable of constituting a breach of the Code of Conduct? The law here is not clear, as is explained in the report, but it is at least arguable that the Code of Conduct is engaged in these circumstances, in which case Cllr Robertson's conduct is capable of constituting a breach of it. Having considered relevant legislation and case law I conclude that on the facts of this particular case the Code is engaged and that Cllr Robertson is in breach.

Councillor Robertson's official details

Councillor Robertson was first elected to office as a councillor of Lewes District Council on 3 May 2007 and has served continuously since. Councillor Robertson was most recently re-elected in May 2015 for four years.

Councillor Robertson has given a written undertaking to observe the Code of Conduct adopted by Lewes District Council.

The relevant Legislation and protocols

On 19 July 2012, in accordance with Chapter 7 of the Localism Act 2011, Lewes District Council (the Council) adopted a Code of Conduct (the Code) in which the following paragraphs are included:

“(1) The Code applies to you as a member of the authority, when acting in that capacity.

Scope

- (1) you must comply with this Code whenever you –
 - (a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority and references to your official capacity are construed accordingly
- (2) This code does not have effect in relation to your conduct other than where it is in your official capacity.

General Obligations

- (2) You must not:
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (5) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”
 - (b) You –
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage”

The code of Conduct adopted by Lewes District Council includes a note at the end of it which directs members’ attention to the provisions set out in Section 106 of the Local Government Finance Act 1992 as it affects members who might be in arrears with their Council tax payments.

This reads:

“Note from Monitoring Officer: Councillors are reminded that quite apart from the Code of Conduct, Section 106 of the Local Government Finance Act 1992 restricts the rights of Councillors who are two months or more in arrears with their Council tax payments. Any such member must disclose the fact and must not vote at any meeting on decisions being taken which might affect the level of the council tax or the arrangements for administering it. Failure to comply is a criminal offence.”

A copy of the Code of Conduct is attached at Appendix A. A copy of Section 106 of the Local Government Finance Act 1992, as amended, is attached at Appendix B.

Summary of Events

On 27 October 2016 the Argus published a story which was headed as follows:

“Authorities urged to name those who have received summonses

16 councillors pursued over council tax bills”

A copy of the press article is attached (Appendix C)

The press article said that Cllr Robertson had been taken to court by the district council for failure to pay his council tax.

It is a fact that on 2nd November 2016 after issuing a number of reminders, the district council issued a summons against Councillor Robertson, for non-payment of council tax.

The press article records that on being questioned about his failure to pay council tax, Councillor Robertson gave his reasons for his failure as follows:

“I didn’t pay it one month because council tax was the last priority to pay.

I paid my rent and I paid my water but there wasn’t anything left for council tax.

If people can’t afford it, they can’t afford it”

The press article further records Councillor Robertson as saying:

“I went down the court route and then I did pay it. I wanted to see how the system worked and it works extremely well”.

On 27 October 2016 a complaint was received from Councillor Sarah Osborne as follows:

“By making the comments that were quoted in an article in The Argus today (link provided above) Councillor Robbie Robertson has conducted himself in a manner which could reasonably be regarded as bringing his office and the authority into disrepute”.

In a phone call to the Monitoring Officer the same date, Councillor Osborne emphasised that her complaint did not relate to the fact of non-payment because she recognised that councillors, like residents, might struggle financially to pay council tax due. Her complaint related to the comments alleged to have been made by Councillor Robertson. To her mind the comments made, particularly the reference to council tax payment being considered a “last priority” and the suggestion that Councillor Robertson “wanted to see how the system worked” showed a lack of regard for his obligations as a councillor and brought both himself and the district council, into disrepute.

The Monitoring Officer interviewed Councillor Robertson on 10 November 2016.

Councillor Robertson admitted that he had made comments which broadly reflected the comments attributed to him by the press article.

He said that the press quotes were not entirely accurate. He would not have said that he had “paid my rent” because he has a mortgage and does not pay rent.

Councillor Robertson confirmed that the comment about wanting to see how the system worked was accurate, although he believed he may have made a fuller comment than that recorded in the press article.

Councillor Robertson stated that he was not aware that his comments were to be published. The phone call from the reporter had been unexpected and he felt that the reporter was trying to provoke him.

Councillor Robertson acknowledged that a press article headed “16 councillors pursued over council tax bills” and which focussed on him as a councillor being taken to court by his own council, might be an embarrassment to the council and he was sorry for that.

He maintained however that the council tax collection system was wrong and that a better system would be for the district council to deduct an amount equivalent to his council tax liability before paying him his councillor’s allowance.

The Monitoring Officer asked whether Councillor Robertson considered there was anything wrong in participating in a decision to set council tax for residents across the district and then failing to pay it himself. Councillor Robertson maintained that the system was wrong.

In response to a suggestion from the Monitoring Officer that a failure to pay a tax which he was responsible for setting might be viewed as undermining the Council tax collection system Councillor Robertson said that his Group Leader had indicated that he was not alone in that other councillors had not paid council tax due either.

The Monitoring Officer asked Councillor Robertson to explain his comment – “I wanted to see how the system worked and it words extremely well”.

Councillor Robertson said that he had wanted to “test” the council’s council tax collection system. He wanted to put himself in the same position as any other resident; he wanted to assure himself that the council would treat him exactly as they would treat anybody else in its dealings with him. He said:

“I was impressed with the Council for treating me like everyone else and not making an exception to the rule” (ie because I was a councillor).

The Monitoring Officer asked whether he had considered how having to serve one of their own councillors with a court summons might have made officers feel.

Councillor Robertson said he was pleased they had not given him any special treatment. The Monitoring Officer suggested he might have put officers in an embarrassing position and made them uncomfortable. Councillor Robertson had not considered this point but acknowledge that this might be the case.

The Monitoring Officer suggested that a reasonable interpretation of Councillor Robertson's comments, especially the comment "I wanted to see how the system worked and it works extremely well" – might be that he was being flippant and showing a lack of regard for his office as a councillor and for the reputation of his council. His comment might reasonably be regarded as an attempt to trivialise what was a matter of some gravity.

Councillor Robertson said that this was not his intention. Rather, he had meant that he as a councillor had been scrutinised and made to pay; as a consequence everyone else would know that the collection system worked well and that they too would have to pay.

Councillor Robertson said that some residents had sympathised with his position. One had said to him, having seen the press article, "well done. I've been in the same position. Now I know you're not made of money".

When asked what effect the press article might have had on the reputation of the district council and councillors generally, Councillor Robertson said that although he could see how it might be interpreted as damaging, his intention had been to show that he was just like everyone else and had been treated accordingly.

At the same time he repeated that the system did not work and that the Council could assist by withholding his allowance and using it to fund his council tax liability.

In response to the Monitoring Officer asking what action Councillor Robertson might be willing to take to mitigate the situation, Councillor Robertson said that he would be willing to make an apology to all councillors, either by way of a statement at full Council or by way of personal letter to all Councillors.

Reasoning as to whether there have been failures to comply with the Code of Conduct

Official Capacity

It is necessary to consider whether the Code applied to Councillor Robertson in the circumstances of the case.

The Code states that it does not have effect in relation to a member's conduct other than where that conduct is carried out in an official capacity.

Was Councillor Robertson conducting the business of his authority, or acting, claiming to act or giving the impression he was acting as a representative of his authority at the time he made his comments to the press? Or was he in fact acting in a private capacity i.e. was he in the same position as any other resident who might be in council tax arrears and responding in a private capacity?

Previous decisions taken by the Adjudication Panel for England and case law in the High Court suggest that the notion of acting in an official capacity/carrying out the business of the office of councillor, is to be narrowly construed.

The Court case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 is relevant here. In that case Mr Justice Collins considered the scope of the Code and the extent, if any, to which it might be applied to the conduct of a member acting in a private capacity.

Mr Justice Collins stated:

“It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction be followed be caught by the Code if the offending had nothing to do with his position as a councillor. Section 80 of the Local Government Act 1972 provides for disqualification for election to a local authority of those who have within 5 years before the date of election been convicted of any offence which has resulted in a sentence of 3 months imprisonment (whether or not suspended) or more. Parliament could for example have provided that conviction of any offence carrying imprisonment whatever the sentence should lead to consideration of some punitive action by the Standards Board. It seems to me that if it is thought appropriate to subject a member of a local authority to a code which extends to conduct in his private life, Parliament should spell out what is to be covered”.

Mr Justice Collins made clear that a distinction is to be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. A member is subject to the provisions of the Code when he/she conducts the business of the authority or when a member acts, claims to act, or gives the impression that s/he is acting as a representative of his/her authority.

The paying of one's Council tax is clearly something which a Councillor does in his/her private capacity.

The *Livingstone* case made clear that the Code does not seek to control what members may do in their purely private and personal lives.

The *Livingstone* case was considered in a later case – *Bartlett and Milton Keynes Council* [2008] APE 0401. The Tribunal in that case determined that the *Livingstone* case established that a Councillor might be said to be acting in an official capacity only in the following circumstances:

- (a) the Councillor should be engaged in business directly related to the Council or constituents,
- (b) the link between the Councillor's office and the conduct should have a degree of formality.

If this line of case law is followed then since the conduct by Councillor Robertson which gave rise to the complaint arose out of something (ie not paying his council

tax) which affected him in a private, as opposed to an official, capacity, the Code cannot be engaged.

If the non-payment of council tax is insufficient to engage the Code, then Councillor Robertson's subsequent comments to the press about his failure to pay, similarly, cannot engage the Code.

There is an alternative construction however and this is based on the very special responsibility which councillors have for the setting of council tax for residents in their district.

It is notable that Parliament has seen fit to make specific legislation (Section 106 Local Government Finance Act 1992) which denies councillors their councillor rights to participate in debate and voting on any matter relating to the setting or administration of council tax.

There is no similar statutory provision relating to any other function carried out by a councillor and the absence of such seems to me to demonstrate that council tax setting and administration is at the heart of councillors' responsibilities, to such an extent that non-payment of such tax by a councillor goes beyond a purely personal and private matter.

If a councillor responsible for setting and administering council tax for all those residents in his/her ward and district then fails to pay that tax himself/herself, this can be considered to be conduct which undermines the council tax collection system. If the failure becomes publicly known then this is capable of adversely affecting the reputation of the individual councillor and the reputation of the authority.

I am not aware that there is any standards-related case law on this issue. There is however a persuasive and recent Freedom of Information case which is relevant: *Haslam v (1) Information Commissioner (2) Bolton Council* [2016] UKUT 0139 (AAC).

This case involved a Bolton journalist who made a FOI request for details of councillor council tax payments. The Upper Tribunal overturned 2 previous decisions and ruled that such information was disclosable. The judgement suggests that this was because of the very strong links between the essential role of a councillor in setting and ensuring the proper administration of council tax, and the payment of such tax by councillors including the special legislative provision in section 106, relating to the 2 month arrears rule.

In this case, the upper Tribunal (Judge Markins QC) concluded as follows:

"39. There was much debate before me as to the extent to which non-payment of council tax by a councillor was a public or a private matter. The position of the Council was in essence that a councillor's failure to pay the council tax was largely a private matter and so the tribunal's silence as to the asserted public nature of the issue was not as significant as contended by Mr Haslam. I accept that there is a private element to non-payment of council tax, even in the case of a councillor. It is a matter of a private debt in respect of which the

individual incurs a private liability. It arises out of a person's occupation of a private property. The liability may arise jointly with other persons with whom the individual forms a household. Persistent non-payment will lead to the individual being summonsed, in a personal capacity, and possibly being subject to a liability order.

40. But, in the case of a councillor, it is not only a private matter. A councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant. A number of specific features of this were advanced in submissions to the First-tier Tribunal. In particular, section 106 of the Local Government Finance Act 1992 bars a councillor from voting on the Council's budget if he or she has an outstanding council tax debt of over two months. If a councillor is present at any meeting at which relevant matters are discussed, he or she must disclose that section 106 applies and may not vote. Failure to comply is a criminal offence. Thus council tax default strikes at the heart of the performance of a councillor's functions. It is evident that setting the council's budget is one of the most important roles undertaken by councillors. The loss of one vote could make a fundamental difference to the outcome. This adds a significant public dimension to the non-payment of council tax. The very fact that Parliament has legislated in this way reflects the connection between non-payment and the councillor's public functions. Moreover, as the Commissioner observed in his decision notice, recent failure to pay council tax is likely to impact on public perception and confidence in a councillor as a public figure."

If the reasoning in this very recent case is followed then public knowledge of non-payment of council tax, coupled with the consequent adverse public perception and lack of confidence in the councillor means that the non-payment is in itself certainly capable of bringing both the office of councillor and the council itself into disrepute, thus constituting a breach of the code.

If the non-payment of council tax constitutes a breach of the code, then similarly, the consequent comments made by Cllr. Robertson to the press are likewise capable of engaging the Code since they flow from the non-payment.

I repeat here that the complaint received was not in fact about the non-payment of council tax; rather it was about the nature of the comments made by Cllr. Robertson to the press.

I now consider the nature of the comments made.

Cllr. Robertson has explained to me the intention behind his comment—"I went down the court route and then I did pay it. I wanted to see how the system worked and it works extremely well."

Whilst acknowledging Cllr. Robertson's explanation I believe a reasonable reader might construe his comments to the press to be irresponsible. They suggest that Cllr. Robertson deliberately withheld payment until forced into court by his own council, with the attendant embarrassment to council officers which that may have occasioned, which could in itself be a possible breach of paragraph 2 (d) of the

Code (not to do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority).

Cllr. Robertson's suggestion to me was that he wanted to make sure that he was treated 'just like any other resident in arrears' I took this to mean that he wished to ensure that officers did not give him any special treatment in relation to the enforcement of his debt because of his position as a councillor, an understanding which he confirmed to be accurate.

I do not understand or have any explanation as to why Cllr. Robertson thought council officers might treat him differently to other residents. There is no evidence, and no suggestion, from Cllr. Robertson that there may be any evidence, to suggest that officers might deal with him differently.

There is no evidence that Cllr. Robertson was hoping to receive special treatment and I am satisfied from my interview with him that this was not his intention in failing to pay until taken to court. Clearly, if his intention had been otherwise this would have constituted a clear breach of para 5 (b) (a) of the Code (must not use or attempt to use your position as a member improperly to confer on or secure for yourself...an advantage).

I do believe, that the comment "I didn't pay in one month because council tax was the last priority to pay", when made by a councillor who is responsible for setting that same council tax, undermines the council tax collection system and is therefore capable of constituting a breach of the Code as a consequence of bringing the office of councillor and the district council itself into disrepute.

Finding and Recommendations

Based on a review of the complaint, evidence and relevant caselaw I consider that Councillor Robertson's failure to pay council tax due constituted conduct which was not only a private but also a public matter, in accordance with the finding in Haslam v (1) Information Commissioner (2) Bolton Council (2016).

As such both the failure to pay and the subsequent comments made to the press about his failure to pay amounted to conduct which was both capable of constituting and which did actually constitute a breach of the Code in that it brought his office as a councillor and the district council itself into disrepute.

Legislation (s.106) specifically prohibits councillors in participating in setting/administering council tax when they are two months or more in arrears. It should be noted that Councillor Robertson was not two months or more in arrears at the date of the council meeting at which the level of council tax was set (February 2016).

It is recognised that on the basis of my finding that non-payment of council tax constitutes a breach it would be a relatively easy matter for a councillor, through financial difficulty or oversight, to miss a payment and, if the matter becomes publicly known, find themselves to technically be in breach of the Code.

It is suggested therefore that a mere technical breach should attract a lenient sanction, if any. It is worth noting again that it was not the non-payment of council tax due which occasioned the complaint. The complaint was made because of the comments which were subsequently made to the press. It is therefore recommended that in determining whether there is a breach of the Code which warrants further action the panel may wish to concentrate on that aspect, namely the comments made.

Authorities urged to name those who have received summonses

16 councillors pursued over council tax bills

By Neil Vowles
Local government reporter
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SIXTEEN Sussex councillors received reminders or court summonses for not paying council tax last year but some local authorities are refusing to name them, including Brighton and Hove.

Two of the councillors were taken to court by their own employers with Lewes District councillor Robbie Robertson claiming paying council tax was at the bottom of his financial priorities.

Cllr Robertson, a former mayor of Peacehaven, also said he chose to go through the courts before paying the £973 he owed to see how the system worked.



Robbie Robertson when he was mayor of Peacehaven

But while some Sussex councils were prepared to name non-paying councillors, Brighton and Hove City Council refused to do so for the one councillor who received a court summons for 2015-16.

The council refused to name the councillor after a request by Private Eye.

But union leaders are calling for the authority to name the councillor, who eventually paid up before their day in court, as a matter of public interest.

Brighton and Hove also issued a reminder to a second councillor who paid before being issued with a summons while Chichester, Mid

Sussex, Eastbourne, Hastings and Rother councils all had to remind councillors to pay their due.

Cllr Robertson, who represents Peacehaven West ward and also works in the Brighton and Hove City Council mayor's office, said: "I went down the court route and then I did pay it. I wanted to see how the system worked and it works extremely well.

"I didn't pay it one month because council tax was the last priority to pay.

"I paid my rent and I paid my water but there wasn't anything left for council tax.

"If people can't afford it, they can't afford it."

Rother District Councillor Genette Stevens of Rye ward, the second councillor named, said: "

If I hadn't paid any council tax at all I would understand but this was a genuine overlook. I thought I had paid.

"I get lots of letters. I didn't even see the court summons.

"I had a lot going on last year. I became a councillor, my uncle died, I had lots of things going on in my life and I was running a pub as well."

GMB branch secretary Mark

continued...

cont

factfile

COUNCILS and their action against non-paying councillors:

Chichester City Council one reminder

Mid Sussex District Council one reminder

Brighton and Hove City Council two reminders, one summons to unnamed councillor, paid before court appearance

Lewes District Council five reminders, one summons to Robble Robertson for £973.55, councillor paid after court.

Eastbourne Borough Council, three reminders

Rother District Council, three reminders, one summons to Gennette Stevens for £136, councillor paid after court.

Hastings Borough Council, one reminder

Turner said: "Absolutely there is a public interest to know which councillor this is.

"You could argue that this is a case of bringing the council into disrepute. You wouldn't necessarily condemn someone for not paying it if they couldn't pay it.

"But you could consider it hypocritical for a councillor to stick their hands up in February and vote through a rise if they won't pay their council tax."

A Brighton and Hove City Council spokeswoman said: "The council does not comment on cases covered by data protection."

**Ex-mayor:
why I
didn't pay
council tax**

ARGUS
FRONT
PAGE



SIXTEEN Sussex councillors received reminders or court summonses for not paying council tax last year. They included former mayor of Peacehaven Robbie Robertson, above.

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England](#) | [Wales](#)

Law In Force

England

106.— Council tax and community charges: restrictions on voting.

(1) This section applies at any time to a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities (including in either case a sub-committee), [or a council manager within the meaning of section 11(4)(b) of the Local Government Act 2000,]¹ if at that time—

- (a) a sum falling within paragraph 1(1)(a) of Schedule 4 to this Act; or
- (b) a sum falling within paragraph 1(1)(a), (b), (d) or (ee) of Schedule 4 to the 1988 Act (corresponding provisions with respect to community charges),

has become payable by him and has remained unpaid for at least two months.

(2) Subject to subsection (5) below, if a member [or a council manager]¹ to whom this section applies is present at a meeting of the authority or committee [or in the case of an authority which are operating executive arrangements the executive of that authority or any committee of that executive]¹ at which any of the following matters is the subject of consideration, namely—

- (a) any calculation required by [Chapter III, IV, 4ZA or IVA of Part I]² of this Act;
- (b) any recommendation, resolution or other decision which might affect the making of any such calculation; or
- (c) the exercise of any functions under Schedules 2 to 4 to this Act or Schedules 2 to 4 to the 1988 Act (corresponding provisions with respect to community charges),

he shall at the meeting and as soon as practicable after its commencement disclose the fact that this section applies to him and shall not vote on any question with respect to the matter.

[(2A) In the case of an authority which are operating executive arrangements, if or to the extent that any matter listed in paragraphs (a), (b) or (c) of subsection (2) is the responsibility of the executive of that authority, no member of the executive to whom this section applies shall take any action or discharge any function with respect to that matter.]¹

(3) If a person fails to comply with subsection (2) above, he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale, unless he proves that he did not know—

- (a) that this section applied to him at the time of the meeting; or
- (b) that the matter in question was the subject of consideration at the meeting.

(4) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.