

1 Summary

- 1.1 This report follows on from a discussion at HIOWLA on 22 June 2012, when Members resolved that further work be undertaken to explore the options for a pan-Hampshire Members' Code of Conduct. The report sets out an analysis of the main options, with the advantages and disadvantages in each case, and identifies one particular option for consideration as a way forward.
- 1.2 It is not within the scope of the report to provide detailed guidance on the requirements of the Localism Act regarding Member conduct. Members are referred to the report of 22 June 2012, which included a summary of the changes introduced by the Localism Act. Where further or more detailed advice on these requirements is sought, Members should refer to their authority's monitoring officer.

2 Background

- 2.1 The Localism Act 2011 has amended the arrangements governing standards of member conduct that were previously set out in the Local Government Act 2000. Local authorities, including fire and rescue authorities and national park authorities, were therefore required to put in place revised arrangements in this regard from 1st July 2012. The only exception would be to the official Mayoral events attended through the Mayor's Office as these are formal arrangements, the details of which are already available for inspection if needs be.
- 2.2 At the HIOWLA meeting on 22 June 2012, it was reported that Members of Hampshire Fire and Rescue Authority ("HFRA") had identified that there was potential scope for co-operation and collaboration between authorities in implementing some or all of these arrangements. HFRA Members had asked that this be raised within the HIOWLA arena so that such potential could be further explored.
- 2.3 HFRA comprises 25 Members – 19 Members of Hampshire County Council, and three Members of each of Portsmouth and Southampton City Councils. A number of HFRA Members are also members of district councils and/or parish councils. The previous arrangements under the Local Government Act 2000 required all such authorities to adopt a code of conduct based on a statutory Model Code, with only very limited scope for variation. Under the Localism Act, it is possible for each authority to adopt a different Code. HFRA Members recognised that this could create potential for confusion, if the ethical standards to which they must adhere vary depending on the capacity in which they are acting, or which authority's meeting they are attending. It was felt that this may increase the risk of inadvertent failure to comply.
- 2.4 It was considered that the same situation and risk may arise for Members who are "double" or "triple-hatted" in other settings e.g. a district councillor who is also a parish councillor and/or a member of one of our two national park authorities. There is also the possibility that Members representing their authorities on joint committees would be subject to differing codes of conduct

while engaged on essentially the same business. This may cause confusion not only for Members, but also for stake holders and members of the public.

- 2.5 The meeting resolved: "That the HIOWLA authorities expressed support for a pan-Hampshire code of conduct and that Kevin Gardner (*on behalf of the Clerk to HFRA*) would lead on the project to explore co-operation and collaboration between the HIOWLA authorities to produce a joint code to implement the requirements of the Localism Act on Members' conduct."
- 2.6 It was acknowledged that, for reasons of timing, each of the HIOWLA authorities would need to proceed to put in place their own arrangements from 1 July 2012, to ensure that they complied with the Localism Act. However, this left open the possibility of those authorities agreeing to adopt a different code, which could be a pan-Hampshire Code, at a later date.
- 2.7 There was no wish from the meeting to explore further co-operation in the form of a joint standards committee or joint arrangements for complaints handling. These aspects have not been explored further, therefore.
- 2.8 In considering the options for a pan-Hampshire Code, a period of time has been allowed for the Localism Act arrangements to bed down, to establish whether, and the extent to which, the potential confusion and perceived issues relating to "multi-hatted" members have materialised in practice. Members' experience of this will be invaluable in judging whether there is indeed a need for greater consistency in approach.
- 2.9 This paper sets out the suggested options for greater collaboration.
- 2.10 It should be noted that, in some situations, the degree to which a Member may participate in debate or voting on an item of business may be affected by common law principles relating to bias and predetermination, rather than by the requirements of their authority's Code of Conduct regarding disclosure of interests. This position would continue to apply, unaffected by any of the proposals below. Should such an instance arise, advice should be sought from the relevant authority's own legal officers.

3 Option 1 – Consistent Approach to Disclosable Pecuniary Interests

- 3.1 At the HIOWLA meeting on 22 June 2012, the Regulations on disclosable pecuniary interests ("DPIs") had only recently been published, and had yet to come into force¹. These are now in place and provide a basic level of commonality across all of the authorities as to the requirements upon Members for the registration and disclosure of pecuniary interests. The first option therefore involves a view that, in the light of experience in practice, this now secures a sufficient level of consistency and that no further provision is required.
- 3.2 The advantages of this option are:

¹ 1 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which came into force on 1 July 2012

- It strikes a balance between consistency in the key area of registration and disclosure of significant pecuniary interests, while recognising that authorities have discretion to adopt additional provisions where they consider this appropriate to local needs
- It is easy to implement, representing the status quo

3.3 The disadvantage of this option is:

- The ability for authorities to adopt additional provisions in their codes enables further requirements to be adopted on the registration and disclosure of pecuniary interests other than DPIs (e.g. gifts and hospitality), and non-pecuniary interests. This may still lead to confusion for multi-hatted members therefore, who would still need to adhere to slightly different rules on registering and disclosing interests.

4. **Option 2 – Consistent Approach to Pecuniary and Non-Pecuniary Interests other than DPIs (“Personal Interests”)**

- 4.1 This option goes one step further than Option 1 and would involve all authorities adopting a common set of requirements concerning registration and disclosure of those pecuniary interests that do not meet the description of a DPI, and non-pecuniary interests. Further, there could be consistency as to when a Member, who has a DPI or other interest in a matter being considered at a meeting, is required to leave the meeting room for that item.
- 4.2 Research suggests that a common approach may be achievable here.
- 4.3 Personal Interests: A number of the Hiowla authorities already require there to be at least some registration and/or disclosure of personal interests. The Localism Act reduced the scope of interests legally required to be registered and disclosed, leaving the making of additional provision to local discretion. There is a feeling that some disclosure of personal interests remains appropriate in the handling of certain potentially sensitive types of business (e.g. planning applications, the award of grants and contracts), where reliance solely on the rules relating to DPIs would not afford a sufficient level of transparency.
- 4.4 A number of authorities regard a “personal interest” as arising in an item of business where it relates to or is likely to affect any of the following bodies of which the Member is a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 4.5 Similarly, a number of authorities provide that a “personal interest” will also arise where a decision on an item of business might reasonably be regarded as affecting the well being or financial position of the Member, a member of the Member’s family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority’s area.

- 4.6 Based on the current range of approaches, a possible basis for a common, proportionate approach would be a requirement to disclose a personal interest orally at a meeting, where it is relevant to an item of business being considered at that meeting. There would be no requirement to enter the interest in the published register of interests, though the oral disclosure at a meeting would be recorded in the minutes of that meeting. Once the interest has been disclosed, there would be no requirement for the Member to leave the room, and the Member would be able to participate in discussion and vote on the matter. There would be no requirement to include the interest in the register of interests which is published on the web.
- 4.7 Although many of the Hiowla authorities accept the principle that there should be some registration and/or disclosure of personal interests, the detailed provisions adopted by the authorities vary. Acceptance of a need for change on the part of some authorities would be required, as the price to be paid for achieving a common Hiowla-wide approach.
- 4.8 Gifts and Hospitality: A number of authorities have adopted a requirement to register the receipt of gifts or hospitality. The general threshold of value for registration varies, between £25 and £50. It may be possible to reach agreement in principle that such a requirement should be universally adopted, with an agreed value, say £50.
- 4.9 Exclusion from the Room where a Member has a DPI: In general, authorities require through their standing orders that a Member who holds a DPI in a matter being considered at a meeting should leave the room while the discussion and vote on that item take place.
- 4.10 The advantage of this Option 2 would be:
- All authorities would operate consistent provisions regarding all aspects of the registration and disclosure of interests, reducing risk of confusion amongst Members, and of inadvertent failure to comply with the relevant authority's code
- 4.11 The disadvantage of this option would be:
- It still does not address the issue of consistency in requirements concerning aspects of conduct other than registration and disclosure of interests

5 Option 3 – Consistent Approach to DPI's, other Pecuniary and Non-Pecuniary Interests, and other Aspects of Conduct

- 5.1 This Option involves going one step further than Option 2 by ensuring consistency in provision regarding aspects of conduct other than registration and disclosure of interests. While the precise wording may differ slightly from one authority's code to another, many currently include provision in areas such as the following:

- treating others with respect
- maintaining confidentiality
- observing requirements of equalities legislation
- upholding, and not compromising, the impartiality of officers
- not using position as a Member to secure an advantage
- using resources of the authority for authorised purposes, and not for political purposes

5.2 There are two ways in which greater consistency could be achieved.

5.3 **Option 3A** would involve agreeing the principles (such as those listed in para 5.1 above) which should be covered by each authority's Code, yet leave it at each authority's discretion to settle upon its own precise wording. **Option 3B** would involve agreeing the actual wording for all authorities to adopt.

5.4 The advantage of Option 3A would be that:

- There is consistency in the principles of proper conduct that members are required to observe
- There is discretion for authorities as to the style in which the requirements are expressed
- It may better facilitate agreement and adoption, as it would not be necessary to resolve issues where there are different views on detailed drafting

5.5 The disadvantage of Option 3A would be that:

- There is still some minor inconsistency in the particular requirements Members are required to observe

5.6 The advantage of Option 3B would be that:

- It achieves complete consistency across all authorities on not only the principles, but the precise details, of the requirements placed upon Members

5.7 The disadvantage of Option 3B would be that:

- It may be viewed as too prescriptive and not recognising a role for local variation to meet local needs
- It may be difficult to reach agreement.

6. Comment

6.1 This part of the report sets out some considerations to be borne in mind in weighing up the above options.

6.2 The experience of Members in the period since July 2012, operating within the Localism Act requirements, is key. For example, some Members may feel that the concerns expressed prior to implementation about potential confusion for "multi-hatted" members, have not materialised, or have been largely addressed by the introduction of universal statutory requirements on the registration and disclosure of DPs. To the extent that there may be some remaining inconsistency amongst authorities on other aspects of their Codes,

it may be felt that this is not significant, a natural consequence of applying principles of localism, and insufficient to justify the investment of further time and resource in the development of an overly prescriptive, common Code. Where this is the view, Option 1 would provide a basis for the way forward, and would involve maintaining the status quo.

- 6.3 As the other options involve change, it should be recognised that legally it is for each local authority to adopt its own Code of Conduct² and, in doing so, to ensure that its Code is consistent with the Nolan principles³ and includes such provision as it considers appropriate in respect of the registration and disclosure of pecuniary and other interests⁴. Where a local authority has adopted a Code of Conduct it is able to revise it, or adopt a replacement⁵. It is also for each local authority to decide whether its Standing Orders should provide for the exclusion of a member from a meeting, while the discussion and vote takes place on a matter in which that member has a disclosable pecuniary interest⁶.
- 6.4 An authority cannot therefore be required to adopt a particular Code simply because it is being adopted by neighbouring authorities. The adoption of a pan-Hampshire Code would involve each authority voluntarily recognising the value that was added by having a Code that shared the same essential characteristics as those of neighbouring authorities.
- 6.5 It may therefore facilitate the reaching of voluntary agreement if the adopted solution comprises a core set of common principles, yet builds in some local discretion for authorities to supplement these where it considers necessary to meet local needs.
- 6.6 Where it is felt that a middle line is required, Options 2 and 3A may be attractive: Option 2 achieves consistency in the registration and disclosure of DPIs, other pecuniary and non-pecuniary interests; Option 3A extends this consistency further into the core values in other areas of conduct, yet leaves it to authorities to choose how to express these, and/or to add further values where they consider it necessary to do so.
- 6.7 Where the preferred option is Option 3B, then in theory one way in which this could be implemented is by one authority's existing Code being adopted by all the other authorities. However, it may be more conducive to securing agreement if any pan-Hampshire Code that emerges were to be seen as a "new" Code, not originating from any one authority, but an evolution building on the work and experience to date of the Members of all the HIOWLA authorities.

7. Proposal

- 7.1 Following consideration of the options, HFRA's Standards and Governance Committee expressed a preference for Option 2. This is felt to strike a

² S.27(2) Localism Act 2011

³ S.28(1) Localism Act 2011

⁴ S.28(2) Localism Act 2011

⁵ S.28(5) Localism Act 2011

⁶ S.31(10) Localism Act 2011

reasonable balance between achieving consistency in the disclosure of interests, while retaining flexibility for some local variation in the setting of standards for other aspects of conduct and behaviour. Further, this would not preclude the adoption of consistent standards for such other aspects of conduct and behaviour at some future stage, should this be desired.

- 7.2 In the event that Option 2 were to receive the support of Hiowla, a suitable draft document has been prepared for agreement (see Appendix), and recommendation to all constituent local authorities for adoption.
- 7.3 As indicated above (para 6.3) Hiowla cannot resolve to adopt a Code of Conduct on behalf of any constituent authority, or to unilaterally amend any authority's existing Code or Standing Orders. However, Hiowla can agree to ask each constituent local authority to review and, where necessary, consider revising its existing Code and Standing Orders with a view to ensuring that these include the core provision set out in the Appendix to the report. Constituent authorities would be invited to do this having regard to the value that is added by the arrangements of all Hiowla authorities, governing the disclosure of member interests, sharing the same essential characteristics.

8. Conclusion

- 8.1 This report has set out the main options for the development of a pan-Hampshire Code of Conduct for Members, together with an assessment of the advantages and disadvantages of each, and identifies one particular option for consideration as a way forward. A pan-Hampshire Code offers the opportunity for greater consistency in approach amongst the HIOWLA authorities towards their responsibilities regarding Member conduct under the Localism Act .

9. Recommendation

- 9.1 That the options for a pan-Hampshire Code of Conduct are considered, and a steer given as to the preferred way to proceed, and
- 9.2 In the event that Option 2 is preferred, that all constituent authorities are asked to review and, where necessary, consider revising their existing Code of Conduct and Standing Orders with a view to ensuring that these include the core provisions set out in the Appendix to the report.

Appendix:

Core Provision to be made in the Codes of Conduct and Standing Orders of Hampshire and Isle of Wight Local Authorities (HIOWLA) to achieve consistency of approach to Member Conduct

Summary

HIOWLA considers that it is in the interests of Members of its constituent authorities, and the public served by those authorities, to adopt a consistent approach to the registration and disclosure of Members' pecuniary and non-pecuniary interests that are relevant to the business of the authorities. It is considered such an approach will reduce confusion as to when relevant interests should be disclosed, and minimise the risk of inadvertent failure to comply with relevant requirements.

It has therefore been agreed to invite each constituent authority to review its Code of Conduct for Members and Standing Orders and, where necessary, to consider revising these to ensure that, in addition to the mandatory requirements of the Localism Act, they include the core provisions set out below.

Authorities may of course adopt such further provision in their Code of Conduct or Standing Orders as they consider appropriate, but are requested to ensure that no such provision is inconsistent with the core provisions set out below.

The term "Member" includes member and co-opted member, throughout.

Code of Conduct

1. Personal Interests

- 1.1. A Member has a "personal interest" in an item of business where it relates to or is likely to affect any of the following bodies of which they are a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 1.2. A Member also has a "personal interest" in an item of business where a decision in relation to it might reasonably be regarded as affecting the well-being or financial position of the Member, a member of the Member's family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority's area.
- 1.3. A Member shall disclose a "personal interest" at a meeting of the authority, committee or sub-committee, where the Member considers that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting.
- 1.4. Disclosure of a personal interest does not affect the ability of the Member to participate in discussion or vote on the relevant item, provided it is not also a disclosable pecuniary interest.

2. Gifts and Hospitality

- 2.1. A Member shall enter in the authority's register of interests the receipt of any gift or hospitality, where the Member estimates the value to be at least £50, within 28 days of receipt.

Standing Orders

3. Exclusion from Meeting Where Member Holds a Disclosable Pecuniary Interest

- 3.1. The authority's Standing Orders shall provide for the exclusion of a Member of the authority from a meeting while any discussion or vote takes place on a matter in which the Member has a disclosable pecuniary interest, unless a dispensation has been granted.