

DECISION-MAKER:	COUNCIL STANDARDS & GOVERNANCE COMMITTEE
SUBJECT:	LOCALISM ACT 2011 – REVISED STANDARDS ARRANGEMENTS
DATE OF DECISION:	11 TH JULY 2012 25 TH JUNE 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

On 16th May 2012 the Council received a report informing Members of the changes to the standards regime brought about by the Localism Act 2011 which makes fundamental changes to the system of regulation and recommends proposals for the drawing up of a revised Code of Conduct for adoption by Council, together with arrangements for dealing with complaints where a Member has breached the Code. This further report follows finalisation of the Regulations governing Members' interests and recommends the adoption of a new Members Code of Conduct based on the draft prepared by the Association of Council Secretaries and Solicitors (ACSeS) as set out in appendix 1. This report further recommends that the final arrangements under the Code for the consideration, investigation and hearing of complaints be approved on the basis set out in appendix 2, subject to a delegation to the Head of Legal, HR and Democratic Services to make any final amendments necessary in order to make the arrangements fit for purpose in accordance with any revised national or local guidance, governance structures or further legal advice received on the operation of transitional provisions that are still awaited. It is proposed that the arrangements are reviewed after 6 months of operation and the authority delegated to the Head of Legal, HR and Democratic Services, following consultation with the Chair of the newly appointed Governance Committee to make any changes deemed appropriate to those procedures arising out of that review.

RECOMMENDATIONS:

STANDARDS & GOVERNANCE COMMITTEE

- (i) To recommend the revised Members Code of Conduct set out at appendix 1 for adoption by Council.

COUNCIL

- (i) To adopt the revised Members Code of Conduct as set out at Appendix 1 to come into operation with immediate effect.
- (ii) To delegate authority to the Head of Legal, HR and Democratic Services to make any technical amendments to the Code which may be necessary as a result of any statutory requirements introduced following the adoption of the revised Code.
- (iii) To adopt the arrangements for the consideration, investigation and hearing of complaints under the revised Members Code of Conduct as set out in appendix 2.

- (iv) To delegate authority to the Head of Legal, HR and Democratic Services to make any technical changes necessary to the arrangements set out in appendix 2 in order to give effect to any statutory requirements or further Leading Counsel's advice awaited in relation to transitional arrangements.
- (v) To amend the Terms of Reference of the Governance Committee as set out in appendix 5 to enable it to grant dispensations under section 33 of the Localism Act 2011 and the Members Code of Conduct.
- (vi) To amend Council Procedure Rules (addition of new paragraph 14.16) as set out in appendix 3 and Executive Procedure Rules (addition of paragraph 1.5(d) and 1.5(e)) as set out in appendix 4 to require that Members who have a personal and prejudicial and / or Disclosable Pecuniary Interest under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 declare that interest and leave the decision taking or decision meeting during the discussion of the relevant item unless a dispensation to stay has been obtained.
- (vii) To appoint David Basson (currently the Chair of Fareham Borough Council's Standards Committee) and Alison Foster to act as Independent Persons for a period of three years for the purposes of the consideration, investigation and hearing of complaints under the Members Code of Conduct and associated procedures.
- (viii) To delegate authority to the Head of Legal, HR and Democratic Services to amend the Council's Constitution to take into account any further amendments required as a result of the Localism Act 2011 and its associated regulations.

REASONS FOR REPORT RECOMMENDATIONS

1. As a result of the Localism Act 2011 the current standards regime is radically changing which requires the Council to put in place new arrangements to deal with matters of ethics, probity and Members' conduct.

DETAIL (Including consultation carried out)

2. The Localism Act 2011 was enacted on 15th November 2011. Standards & Governance Committee and Council have received reports to previous meetings setting out the changes brought about by the Act to the standards framework, and the detailed requirements which were still to be clarified through the Disclosable Pecuniary Interests Regulations.
3. These Regulations are currently available in draft form with the final form still awaited from the Government. The main issues to be defined by Regulations are what will constitute Disclosable Pecuniary Interests, and the date on which the statutory standards framework will cease. On 30th May 2012, the Association of Council Secretaries and Solicitors (ACSeS) circulated the draft Disclosable Pecuniary Interest Regulations and the draft Transitional Regulations which had been issued by the Department of Communities and Local Government (CLG) on which ACSeS has been asked to comment. Comments have been submitted and the Regulations are expected to be

issued shortly. The Government has indicated the commencement date for the new statutory framework will be 1st July 2012. The Council has sought legal advice through ACSeS in relation to the adoption date for the new framework and has been advised that any Code adopted prior to the implementation date of 1st July 2012 would likely be deemed invalid. It is appropriate therefore for the Code to be adopted at the first available Council meeting on 11th July 2012.

4. Leading Counsel's Opinion is also being sought via ACSeS in relation to a number of outstanding issues in relation to the proposed transitional arrangements relating to the revocation of the old Code and what happens to complaints brought under the old Code and it may be necessary to further review the proposed arrangements at appendix 2 in light of any advice received. At present time it would appear that any complaint made before the revocation date but which has not yet reached 'appeal' stage will simply fall away and be discontinued. There appears to be no ability to 'resurrect' any such complaint relating to matters occurring prior to the revocation date in relation to the new arrangements (as any such complaint will not be deemed to be a breach of the new Code as it would not have existed at the time the facts complained of arose.)
5. Members will know that there is a statutory requirement to continue to have a Members Code of Conduct. There is, however, no prescribed Code provided that the revised Code is consistent with the 7 principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those principles are not defined in any more detail.
6. The Local Government Association issued a template Code on 11th April 2012, which is a short outcome-focused document however, the principles are set out such a high level that there is concern that it would be difficult for Members to demonstrate compliance with the Code in the event of a complaint that, for example, Members have not shown 'Objectivity' or 'Integrity' in their dealings with residents or in the decision-making process. There is no cross reference between the template Code and the Guidance to clarify which of the 7 Principles encompass 'valuing my colleagues and staff', and 'always treating people with respect', and what 'dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially' actually requires Members to do differently. Does it, for example, introduce a new requirement to respond to correspondence? For these reasons it is recommended that this model is not adopted.
7. The Department of Communities and Local Government (CLG) issued illustrative text for potential Codes of Conduct. This sets out a number of principles, but is also high level and is not recommended for the same reasons as set out in paragraph 6 above.
8. The previous report to Council recommended adoption of a Code based on the draft being prepared by ACSeS and it is therefore recommended that this approach is the most appropriate in the circumstances and is as set out in appendix 1. The detail of disclosable pecuniary interests is based on the draft Regulations. It is recommended that the draft Code be adopted, and that the Head of Legal, HR and Democratic Services be authorised to amend

the Code as necessary prior to implementation should the final Regulations differ from the draft regulations.

It should also be noted that the proposed Code makes clear that breach of a number of other associated protocols, Codes and guidance will be deemed to amount to a breach of the Members Code of Conduct. These will apply whenever a Member is acting in their capacity, or holding themselves out to be acting in their capacity, as a Member of the Authority including when using social media to communicate with the public etc. In accordance with established case law, the provisions of the Code will not apply where they are proven to be acting in a purely personal capacity.

9. The Localism Act requires the Authority to make “arrangements” for dealing with complaints of breaches of the Code of Conduct by Members.
10. The recommended proposed arrangements are as set out in appendix 2. Further revisions to the processes may be required in order to give effect to any further regulations or guidance that may be issued and it is therefore recommended that authority be delegated to the Head of Legal, HR and Democratic Services to amend as required to give effect to such. The Act gives no statutory right of appeal against a decision on a Code of Conduct complaint, and so the appropriate route of challenge will be through the courts by way of judicial review.
11. The arrangements adopted by the Authority for dealing with complaints of breaches of the Code by Members must include provision for the appointment of at least one Independent Person (IP). As previously agreed, the Head of Legal, HR and Democratic Services has issued the advertisement for an Independent Person(s) and, in accordance with the delegations contained in the previous report to Council, applicants have been interviewed and 2 individuals are put forward for appointment. It is recommended that Council appoint two independent persons in order that one can either be consulted generally or formally be asked for views before a decision is made on an allegation that has been investigated, and the other can be available to advise the Member or co-opted member concerned without an actual or perceived conflict of interest arising.
12. The Localism Act requires the Disclosable Pecuniary Interests of Members and co-opted members (and their spouses, civil partners or persons living with them in a similar capacity) to be registered. The Authority’s Monitoring Officer must maintain a register of these in its area. The register must be available for inspection and must be on the Authority’s website.
13. Each Member or co-opted member must register all Disclosable Pecuniary Interests (DPIs) within 28 days of becoming a Member. Failure to register will be a criminal offence.
14. As it is proposed that this Authority’s Code also include the declaration of other pecuniary or non-pecuniary interests (i.e. in addition to the statutory Disclosable Pecuniary Interests) it would seem logical that there should be a requirement that these too be declared and registered. It is recommended that the Register also retain the requirement for Members to record Gifts and Hospitality received.

15. It is anticipated that requirement to register will begin at the point a new standards regime comes into effect on 1st July. However, compiling a register cannot begin until final regulations have been made defining the Disclosable Pecuniary Interests and the Code adopted by Council.
16. The provisions of the Localism Act on sensitive interests largely replicate those currently in force. Where a Member is concerned that disclosure of the detail of an interest (either a Disclosable Pecuniary Interest or any other interest which he/she is required to disclose) at a meeting or on the register of Members' interests would lead to the Member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
17. The Localism Act stipulates that a Member with a Disclosable Pecuniary Interest cannot participate in any discussion at a meeting and cannot vote; but it does not require the Member to withdraw. To protect a Member from the perception that his/her presence at a meeting might influence the discussion, it is recommended that Council and Executive Procedure Rules are amended in line with the current Code, to require Members who have declared a personal and prejudicial or Disclosable Pecuniary Interest to declare at the meeting and to leave the room during the discussion of the relevant item.
18. Finally, so far as dispensations are concerned, it is suggested that the power to grant dispensations in relation to pecuniary interests be exercised by the Governance Committee. If there needs to be further delegation to an officer then this can be the subject of a further report following the recommended review period.
19. Finally, it is recommended that the Head of Legal, HR and Democratic Services be authorised to amend the Council's Constitution to take into account any further amendments required as a result of the Localism Act 2011 and its associated regulations.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 19 As set out in the report.

RESOURCE IMPLICATIONS

Capital/Revenue

- 20 There will be a cost arising from the requirement to appoint DIP(s) as such persons will be entitled to receive an allowance and expenses but this will be offset by the remuneration that is currently paid to the existing Independent Members of the Standards Committee.
- 21 A decision will need to be made about the remuneration or payment of expenses of the newly appointed DIP(s) which is outside the scope of the Members' allowances scheme and which can be agreed locally.

Property/Other

- 22 N/A

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

23 Chapter 7 Localism Act 2011

Other Legal Implications:

24 None

POLICY FRAMEWORK IMPLICATIONS

25 None

AUTHOR:	Name:	Richard Ivory	Tel:	023 80 832794
	E-mail:	Richard.ivory@southampton.gov.uk		

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Proposed Members Code of Conduct
2.	Proposed arrangements for the consideration, investigation and hearing of conduct related complaints
3	Amended Council Procedure Rules
4	Amended Executive Procedure Rules
5.	Amended Terms of Reference for Governance Committee

Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.		N/A
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Integrated Impact Assessment and Other Background documents available for inspection at: N/A

WARDS/COMMUNITIES AFFECTED:	None
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