

CONSTITUTION WORKING PARTY		
Report Title	The new ethical framework under the Localism Act 2011	
Key Decision	N/A	Item No 5
Ward	All	
Contributors	Head of Law	
Class	Part 1	Date 6 June 2012

1. **Summary**

This report proposes a new Member Code of Conduct for the Council to comply with the requirements of the Localism Act 2011 as well a procedure for dealing with complaints of breach of that Code. Finally the report proposes that the Council retain a Standards Committee and suggests terms of reference for it.

2. **Purpose**

The purpose of the report is to seek the comments of the Standards Committee and Constitution Working Party (CWP) respectively to provisions designed to implement the provisions relating to Standards in the Localism Act 2011.

3. **Recommendations**

It is recommended that the Constitution Working Party:-

- 3.1 approve the draft Member Code of Conduct attached at Appendix 1 for referral to full Council at its June 2012 meeting;
- 3.2 approve the draft procedure for handling complaints of breach of the Code of Conduct attached at Appendix 2, again for referral to full Council;
- 3.3 refer a proposal to full Council that the Council retain a Standards Committee with the composition and terms of reference attached at Appendix 3; and

- 3.4 note that an advertisement has been placed on the Council's website seeking the services of an Independent Person who must be consulted prior to any decision being made following investigation of a complaint under the procedure for handling allegations of breach of the Member Code of Conduct

4 **Background**

- 4.1 Under the Local Government Act 2000 an ethical framework for local authorities is in place until 30th June 2012. That framework includes, amongst other things,
- (a) a statutory Code of Conduct
 - (b) a legal requirement for authorities to have standards committees to promote high standards of ethical behaviour and to investigate complaints of breach of the Code of Conduct
 - (c) a statutory basis for membership of and voting by independent members of the Standards Committee
 - (d) a statutory process for investigation of allegations of breach of the Member Code of Conduct.
 - (e) the ability of local Standards Committees to impose sanctions for proven cases of breach of the Member Code
- 4.2 Until the beginning of this year there was a statutory role for the independent body, Standards for England in promoting ethical standards, monitoring local authority performance in this area and investigating the most serious allegations of breach.
- 4.3 The Localism Act 2011 abolishes the old regime totally from 30th June 2012 and requires authorities to put in place new provisions with effect from 1st July 2012.
- 4.4 The differences between the old and new provisions were most recently the subject of a full briefing to the Standards Committee on 1st March 2012, but the key features of the new legal requirements can be summarised as follows:-
- (a) the abolition of the national Member Code of Conduct and the introduction of statutory elements which must be incorporated in a local Code of Conduct. Those statutory elements relate to the Nolan principles which must be followed and the declaration of interests
 - (b) discretion locally to build on the statutory elements which must be reflected in the Code of Conduct should the local authority see fit to do so

- (c) the abolition of the requirement for all members to undertake in writing to comply with the Member Code of Conduct
- (d) there is no longer a statutory requirement for a Standards Committee, and if one is appointed there are no special legal provisions enabling independent members to vote or chair meetings
- (e) The only sanctions which can be imposed on members breaching the Code are criminal sanctions for breach of the provisions relating to the declaration of interests and withdrawal from consideration of matters in which members have disclosable interests.
- (f) the abolition of the legal requirement to declare the member's interests at meetings if the member has already disclosed the interest in the Register of Members' Interests
- (g) the procedure for investigation of allegations of complaints of breach of the Code of Conduct is a matter for local discretion. However, before making any decision in relation to a breach of the Code of Conduct, an Independent Person must first express their views on the matter. The member concerned may also refer to the Independent Person.

4.5 On 7th December 2011, the Standards Committee agreed that the Council keep the existing Member Code of Conduct unless there is good reason for departure from it and adopt an investigations procedure that promotes confidence and embodies flexibility and that officers bring a further report back on this at the appropriate time.

4.6 On 15 November 2011, the Constitution Working Party resolved to recommend to the Council that it retain a Standards Committee with support for independent membership when it adopts new ethical framework arrangements.

5. **A draft Member Code of Conduct**

5.1 Attached at Appendix 1 is a draft Member Code of Conduct, highlights those elements which are statutory and those which are recommended for adoption locally. Officers are of the view that the inclusion of the local elements shown in text boxes strikes a balance between a code that is on the one hand clear and robust and on the other not overly onerous on members. Officers believe that the adoption of the code attached at Appendix 1 should still inspire public confidence as well as being realistic and not overly complicated or bureaucratic.

5.2 Members will note that the draft Code is not explicit on what is a disclosable pecuniary interest and what is not, that is because the

regulations have not yet been received, though CLG have confirmed that they are expected any day and the implementation date is still to be 1st July. If they are not received prior to the CWP meeting, officers propose that the definition of disclosable pecuniary interests be inserted as set out in the regulations when published, and that those other interests to be disclosed in the Register of Members' Interests be those which would now be disclosable under our existing Code. If that is agreed, the Monitoring Officer would propose that authority be delegated to her to amend the draft Code to give that effect prior to the Council meeting.

6. A draft procedure for the investigation of complaints of breach of the Code

A draft procedure is now attached at Appendix 2. It is a much simpler procedure than that which has been previously in place as a matter of law which was widely recognised as lengthy, rather complicated, costly and could not be adapted to the particular circumstances of the allegation. The new draft procedure has as its key elements:-

- (a) that complaints be referred to the Monitoring Officer in writing.
- (b) that where the Monitoring Officer thinks it appropriate, she may try to resolve the matter informally by discussion with both the complainant and the member concerned or otherwise.
- (c) where this cannot be achieved or where the Monitoring Officer thinks it appropriate that a formal investigation take place, the Monitoring Officer may investigate the complaint personally or appoint another person to do so on her behalf.
- (d) the Monitoring Officer or the person appointed by her to investigate the complaint will produce a report of their investigation
- (e) Once the Monitoring Officer or the person appointed by her to investigate the complaint has completed their investigation whether or not they are of the view that a breach of the Member Code of Conduct has occurred, they will send a copy of their report and all supporting documentation to the Independent Person .
- (f) the Independent Person will review the documentation sent by the Monitoring Officer and any further documentation received from the member concerned and produce a report for the Standards Committee.
- (g) A sub committee of the Standards Committee will consider the Monitoring Officer report, the report of the Independent Person

and any written representations made by the member concerned.

- (h) At their own discretion the sub committee of the Standards Committee may call the member concerned, the Monitoring Officer and/or the person appointed by her to investigate the complaint, and the Independent Person and any other person they deem necessary to answer their questions should they choose to do so.
- (i) The sub committee of the Standards Committee will make a decision as to whether the Code of Conduct has been breached and if so what action to take in respect of that breach.
- (j) If the allegation is proven, the member will have a right of appeal to another sub committee of the Standards Committee. Their decision will be final.
- (k) if the allegation appears to relate to failure to register or declare disclosable pecuniary interests, or to participation in the consideration of a matter where the member's interest precludes such participation, such breaches may result in prosecution. In appropriate circumstances such matters may be referred to the police at any time, at which point the Council's investigation may cease until the police investigation is complete.

7. A Standards Committee

- 7.1 The proposed composition and terms of reference of a Standards Committee are set out at Appendix 3. In accordance with the express wishes of the CWP, it is proposed that the Standards Committee continue and still consist of 6 councillors and 6 independent members. However it is noteworthy that with the abolition of the special legislative provisions allowing the independent members to vote, it will not be possible for the Committee to be independently chaired and only those members who are elected members of the Council will be allowed to vote on matters before it. The independent members will not have voting rights.
- 7.2 Officers suggest that the terms of reference of the existing Standards Committee be amended only to the extent that they reflect the new legislation and this is incorporated in the proposals in Appendix 3. Officers recommend that these terms of reference and the proposed composition of the Standards Committee are referred to full Council for approval.

8. **An independent person**

An advertisement calling for applications for the post of Independent Person to be involved in the procedure for handling allegations of breach of the Member Code of Conduct has been placed on the Council's website. Interviews are to take place in June and the outcome reported to the full Council with a recommendation for appointment at the next Council meeting.

9 **Legal implications**

9.1 The changes to the law are broadly reflected in the body of the report. However there are a number of points to highlight.

- a) The Localism Act abolishes the old regime and a Commencement Order is to be laid imminently which will create a statutory duty under part 1 Chapter 7 Localism Act 2011 to have the new arrangements in place by 1st July 2012.
- b) Second, though the Localism Act 2011 requires that a person who has been a member or officer of the authority within the last 5 years will be precluded from being the Independent Person, DCLG have confirmed that there are to be transitional provisions for one year that those who have been members of the Standards Committee within that period may be so appointed provided that they are not members of the Standards Committee and Independent person at the same time. It is also DCLG's intention to make this transitional arrangement a permanent one. These measures are to be introduced by regulation yet to be seen. The advert has been placed on the assumption that the changes will be made to the law, but no appointment may be made of anyone who has acted in the role of member or officer in the last 5 years unless that regulation is forthcoming.
- c) It is noteworthy that for breaches of the Code of Conduct which do not relate to those for which prosecution is the sanction, there are no special sanctions available to the Council or its Standards Committee. They will be limited to censure, publicity, and in very limited circumstances certain other actions.

10. **Human Rights Implications**

Article 6 of the European Convention on Human Rights incorporated into national law by the Human Rights Act 1998 enshrines the right to a fair hearing. Officers advise that this requirement is met by the proposed procedure for handling allegations of breach which also fulfils the requirement for any hearing to comply with the rules of natural justice.

11 Financial implications

There are no specific financial implications arising from this report

12 Equalities implications

Members are reminded of their duty under the public sector equality duty set out in Section 149 of the Equality Act 2010 to have regard to the need to eliminate discrimination and promote good relations between those with protected characteristics and those without such characteristics. Officers have not identified any specific equalities implications arising from this report.

13 Crime and Disorder Implications

13.1 There are no specific crime and disorder implications, save to note that the new legislation renders it a criminal offence not to declare disclosable interests in the Register of Members' Interests. Participation in consideration of a matter in which a member has a disclosable interest is also liable to prosecution.

13.2 The entire Code is designed to promote ethical behaviour of the highest standard to promote public confidence and reduce the prospect of improper behaviour.

14. Environmental implications

There are no specific implications arising.

Background Papers
None reported

If you would like more information on this report please contact Kath Nicholson: Head of Law on 0208 314 7648