

SLOUGH BOROUGH COUNCIL

REPORT TO: Standards Committee **DATE:** 15th March 2012
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WARD(S): All

PART I **FOR COMMENT AND CONSIDERATION**

REVISED MEMBER CODE OF CONDUCT

1. Purpose of Report

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors and for Parish Councils.
- 1.2 This report outlines the council's response to the new legislation including proposals for a new Members' Code of Conduct, the establishment of a new Standards Committee, as well as discussion around the role of an Independent Person.
- 1.3 The views of the Standard Committee are sought to assist in the development of the proposals prior to submission to Council for approval.

2. Recommendations

3.1 The Standards Committee is recommended to:

- (i) Approve in principle the approach to a new members code of conduct
- (ii) Recommend to Council to create a new Standards Committee at its Annual Meeting in May 2012
- (iii) Submit to Council any comments the Committee may wish to make regarding the composition and implementation of the new Standards Committee, including the role of Independent members.
- (iv) Agree the new format to the structure of the Member code of conduct guidance including
 - Simplified chapter headings
 - Consolidation of sections
 - Summarised list of Do's and Don'ts at the end of section
 - Reduction in Duplication

- (v) Recommend to Council the new arrangements for dealing with Breaches of the code and the three tiered system
 - Monitoring Officer Informal Intervention
 - Monitoring officer Formal Notice to Group Leaders
 - Standards Committee Investigation
- (vi) Recommend to council the implementation plan including the arrangements for use of the code as part of normal business at council meetings and events

3. **Community Strategy Priorities**

- **Being Safe, Feeling**

4. **Other Implications**

(a) Financial

Resources for independent member allowances and the running of the standards committee can be met from the existing Democratic Services budget

(b) Human Rights Act and Other Legal Implications

The Localism Act 2011 places the Council under a statutory duty to establish a newly ordered ethical framework:

- Under section 27(2) it must adopt a code of conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity,
- Under section 29 (1) the Monitoring Officer must establish and maintain a members' register of interests,
- Under Section 28 (6) it must have in place arrangements under which allegations of breach of the code can be investigated and decisions made upon the allegations,
- Under section 28(7) the arrangements put in place must include provision for the appointment of at least one Independent Person whose views are to be sought and taken into account by the Council before it makes its decision on allegations which have been investigated and whose views upon an allegation may be sought by the Council at any other time and may be sought by a member who is the subject of an allegation.

5. **Supporting Information**

- 5.1.1 The Council still has a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. The Localism bill has brought a number of changes to the arrangements for ensuring that this happens. The changes have necessitated substantial amendments and revisions to the current way in which the council deals with member conduct and behaviour

- 5.1.1 The council in common with other authorities has taken the opportunity to improve as well as amend its code, with a particular focus on clarity, simplified guidance and practical examples of implementation.

6. The Major Changes - Standards Committee

- 6.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, the council will still require an effective body to deal with standards issues and case-work. The new standards body will therefore be a normal Committee of Council. As a result the composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages of the process. Independent member involvement in the standards regime has historically served the council well and as such care should be taken to ensure new arrangements make best use of Independent roles within what the guidance allows.
- 6.2 An Independent Person is someone whose views are sought and taken into account by the authority before it makes its decisions on an allegation that it has decided to investigate. The Independent Person's views may also be sought by the authority in relation to an allegation at any other stage in the process or by a member or co-opted member if that person's behaviour is the subject of an allegation.
- 6.3 The Act provides that a person is not independent if he/she is a member, a co-opted Member or an officer of the authority or a relative or close friend of thereof. Furthermore a person is not eligible for appointment if during the preceding 5 years the person was a member, co-opted member or an officer of the authority.
- 6.4 A person may not be appointed as an Independent Person unless the post has been advertised, an application has been submitted and the appointment has been approved by a majority of the members of the authority.
- 6.5 A great of discussion is currently being held across local authorities around the practical implementation of the Independent member role amid speculation that the bar on current independent members from standing will be lifted. Discussion has also taken place with the other Berkshire authorities on the potential of joint recruitment exercises, which may have the benefit of attracting candidates who have previously held Independent member roles in neighboring authorities.

7. Parish Councils

- 7.1 The Borough Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The Borough Council can choose whether it want to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the Borough Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as

wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

8 The Code of Conduct

8.1 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

8.2 The Council current code sits across a number of sections of the ethical framework that include;

- Model code of conduct
- Planning code of conduct for Members and Officers
- Licensing Code of Conduct for Members and Officers
- Local Code Governing Relations Between Elected Members and Council Employees

This has on occasions caused confusion and makes it difficult to explain particularly for new members. It is proposed that the revised code sets out content in a more logical format with a natural progression i.e

- Rules that apply to all members
- Rules that apply to members who sit on committees
- Additional Rules for those members who sit on Licensing & Planning Matters

The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles.

9. Disclosure of Interests

9.1 The biggest change in the standards regime is the abolition of personal and prejudicial interests and the creation of Disclosable Pecuniary Interests. Whilst we know that registration and declaration of such interests are legal requirements with criminal penalties for failure to comply, we do not yet have a clear definition though regulations from the Government are imminent. Offences under the Localism Act 2012 are attached at appendix a

9.2 We do know that a Disclosable Pecuniary Interest has to be declared if the interest is the member's or the member's spouse or partner and the member is aware of the interest. This is the first time that an interest of a third party has to be disclosed when it does not relate back to the member's own circumstances except by association. Moreover, the statutory requirement is not merely to declare such interests but to register them. Previously it was necessary for such an interest to have a beneficial effect on the member's financial position or well-being in order to be declarable.

10. Dealing with Misconduct - Complaints

10.1 The Localism Act requires that the Council adopt "arrangements" for dealing with complaints of breach of Code of Conduct. The Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints.

10.2 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints and it is proposed that It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive.

10.3 These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. A suggested model for this is ;

- Monitoring Officer Informal Intervention
- Monitoring officer Formal Notice to Group Leaders
- Standards Committee Investigation

10.4 If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a quarterly report to Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

11. Implementation of the new code

11.1 Implementation of the new code will require publicity and training for members and officers. To help embed the new approach it is important to establish routines for referring to the code as part of everyday council business. Although the code applies across all council business the following areas of activity will benefit from this increased focus.

Council Reports	New section of the report outlining the
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	type of interests members should declare based upon the subject of the report – note the list will not be exhaustive and the onus will still be on individual members to make the declaration.
Start of all council meetings	Explicit reminder that build upon the standard agenda item around duty to declare interest. Chair to invite members to declare that they do not have any interest in line with that section of the code
Quasi Judicial committees	As above As part of proceedings Legal representative at the committee to provide advice on the application of the code as it relates to ; Predetermination

- 11.2 In addition to the new proactive measure a series of short awareness events and E-Learning courses will be put together for members and officers. These will be available at the start of the new municipal year. Coaching for the Chairs of Quasi Judicial Committee in the practical application of the code in that particular setting will also be provided

8. **Appendices Attached**

'A'- Offences under the Localism Act 2012

Offences under the Localism Act 2012

If a member

(a) fails to notify the Monitoring Officer of any disclosable pecuniary interest before the end of 28 days beginning with the day on which he/she becomes a member [Section 30(1) Localism Act 2011], or

(b) fails to disclose to a meeting at which he/she is present a disclosable pecuniary interest in any matter to be considered or being considered which is not entered in the Council's Members' Interests Register [Section 31(2) Localism Act 2011], or

(c) fails to disclose to a meeting at which he/she is present a disclosable pecuniary interest in any matter to be considered or being considered which is a sensitive interest which requires disclosure of the interest itself though not the detail [Section 31(2) Localism Act 2011], or

(d) fails to notify the Monitoring Officer before the end of 28 days beginning with the date of disclosure any disclosable pecuniary interest which is not entered in the Council's Register of Members' Interests [Section 31(3) Localism Act 2011], or

(e) fails to notify the Monitoring Officer before the end of 28 days beginning with the date when he/she became aware that he/she had a disclosable pecuniary interest in any matter to be dealt with or being dealt with by the member in the course of discharging a Council function [Section 31(7) Localism Act], or

(f) provides information that is false or misleading in relation to any matter covered by paragraphs (a) - (e) knowing that the information is false or misleading or is reckless as to whether the information is true and not misleading. [Section 34(2) Localism Act 2011], or

(g) has a disclosable pecuniary interest in a matter and participates or participates further in any discussion of the matter at a meeting, or participates in any vote or further vote taken on the matter at a meeting except where he/she has been granted a dispensation relieving him/her of either or both of the restrictions. [Section 31(4) Localism Act 2011], or

(h) takes any steps or any further steps in relation to a matter where he/she is discharging a Council function, having become aware that he/she has a disclosable pecuniary interest in the matter. {section 31(8) Localism Act 2011],

he/she is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000).