

Localism Act 2011 – Standards Framework

Standards Committee

Date: 11th June 2012

Author: Director of Law and Democratic Services

Wards: All

Locality Affected: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To recommend the adoption of a new Members Code of Conduct and procedure for investigating and hearing complaints to come into operation when the statutory Standards Framework ceases to have effect under the Regulations to the Localism Act.

2. Recommendations

The Committee is asked to recommend to Council that:

- 2.1 The revised Members Code of Conduct set out at Appendix '4' be adopted, to come into operation on 1st July 2012 or when the current statutory Standards Framework ceases to have effect under Regulations to be made under the Localism Act 2011, whichever is the later,
- 2.2 The Director of Law and Democratic Services be authorised to make any further technical amendments to the Code which may be necessary as a result of any statutory requirements introduced following the adoption of the revised Code.
- 2.3 The arrangements for consideration, investigation and hearing of complaints under the revised Members Code of Conduct be adopted as set out below:
- The Code of Conduct Complaint Form (Appendix '5')
 - Procedure for dealing with Complaints (Appendix '6')
- 2.4 The current statutory Standards Committee be dissolved on 30th June 2012, and a new Standards Committee be appointed with effect from 1st July 2012.
- 2.5 Article 9 of the Council's Constitution be amended as set out in Appendix '8' and that Standards Committee be authorised to grant dispensations under section 33 of the Localism Act 2011.
- 2.6 Council appoints at least one Independent Person to that statutory role at its meeting on 20th June 2012, with each Independent Person to hold office from 1st July 2012 until the date of the Annual Council meeting in 2013 (17th May 2013), with an option to extend for a further period until the date of the Annual Council meeting in 2014, subject to the agreement of the Council and the Independent Person.
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Further information on the subject of this report can be obtained from Stephen Taylor, 01793 463012, staylor@swindon.gov.uk.

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- 2.7 It be noted that Standing Orders were amended at Annual Council on 18th May 2012 to require those declaring personal and prejudicial, or disclosable pecuniary interests, to declare that interest and leave the room during the discussion of the relevant item unless a dispensation to stay has been obtained.
- 2.8 The Director of Law and Democratic Services be authorised to amend Part 4 of the Council's Constitution (Access to Information Procedure Rule) Section 10, 'Meaning of Exempt Information', by deleting paragraphs 8, 9 and 10 and amending other wording accordingly.
- 2.9 The Director of Law and Democratic Services be requested to provide appropriate training for Borough Councillors on the revised Code.
- 2.10 The Director of Law and Democratic Services Officer 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.

3. Detail

- 3.1 The Localism Act 2011 was enacted on 15th November 2011. The Committee has 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 Regulations.
- 3.2 These Regulations are 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. A copy of the draft Regulations and are attached at Appendix '1'. The Government has indicated the commencement date for the new statutory framework will be 1st July 2012 and, therefore, it is recommended that all the necessary arrangements are put in place prior to 1st July 2012.

Revised Members Code of Conduct

- 3.3 Members will know that there is a statutory requirement to continue to have a member 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.
- 3.4 The Local Government Association issued a template Code on 11th April 2012, which is a short outcome-focused document, and is attached at Appendix '2' for

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information. 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?

- 3.5 The Department of Communities and Local Government (CLG) issued illustrative text for potential Codes of Conduct, which is attached at Appendix '3'. This sets out a number of principles, but is also high level.
- 3.6 The National Association of Local Councils (NALC) has subsequently issued a suggested Code to Parish Councils, which they can choose to adopt. The Council has not yet received a copy of this document.
- 3.7 The Monitoring Officer has consulted with the Corporate Governance Working Group, and the Parish and Town Council Clerks Forum on the potential content of a revised Code of Conduct for Members and Parish Councillors. Each has supported the Standards Committee's preference for the current Code to form the basis of the revised Code of Conduct, subject to the inclusion of the definition of disclosable pecuniary interests.
- 3.8 The Corporate Governance Working Party supported this on 13th March 2012, and this was confirmed by Council on 29th March 2012 when it was resolved that:
 - A politically balanced stand-alone Standards Committee be appointed to oversee the ethical framework, with one or more parish representatives co-opted to it, to maintain a transparent process for the public.
 - The Monitoring Officer continue the process for the appointment of one or more Independent Persons directly, and consult the Group Leaders on the process for appointment and remuneration, noting that this Review Working Group would support the appointment of two Independent Persons and a level of remuneration based on the Special Responsibility Allowance currently payable to the post of an independent Co-opted member of the Standards Committee (£1,062.71p).
 - The Cabinet and Council notes that the Corporate Governance Review Working Group supports the Standards Committee's preference for the current Code of Conduct to form the basis for the new Code of Conduct for Swindon wherever possible, but be updated to :
 - Include the new definition of Disclosable Pecuniary Interests when defined by the Regulations.

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- Exclude the need to declare interests where such a declaration is unnecessary, such as where the interest solely relates to being a Council-appointed representative, and is not prejudicial.
 - To reflect and re-enforce the conduct of Councillors required in relation to the use of social media, which was included in the last update to the Media Guidelines for Councillors.
 - The Council introduces in its Standing Orders a requirement for Councillors who have a Disclosable Pecuniary Interest to not only abstain from voting, but also to leave the meeting during the discussion of such a matter.
 - The Monitoring Officer be requested to develop a streamlined version of the procedure for dealing with Member Officer Protocol Complaints which can then be used as the basis for processing Code of Conduct complaints, taking account the requirements of the Localism Act 2011, and subject to any additional requirements arising from the Regulations when issued.
- 3.9 A draft revised Members Code of Conduct is attached at Appendix '4'. The detail of disclosable pecuniary interests is based on the draft Regulations. It is recommended that the draft Code be adopted, and that the Director of Law and Democratic Services be authorised to amend the Code as necessary prior to implementation should the final Regulations differ from the draft regulations.

Process for Receiving and Determining Complaints

- 3.10 The Localism Act requires the Authority to make "arrangements" for dealing with complaints of breaches of the Code of Conduct by members.
- 3.11 It is recommended that the arrangements to be adopted for receiving and determining complaints be a modified version of that used to consider complaints under the Protocol of Member / Officer Relations.
- 3.12 It is recommended that the Monitoring Officer, in consultation with a panel of at least three Members or Co-opted Members of the Committee and if appropriate, an Independent Person, review the complaint to carry out an initial assessment of whether it should proceed, if it should be investigated, or if other action is appropriate.
- 3.13 It is recommended that the Committee approves the following suite of documents in relation to the processing of Complaints:
- The Code of Conduct Complaint Form (Appendix '5')
 - Arrangements for dealing with Member Code of Conduct Complaints (Appendix '6')
- 3.14 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.

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Appointment of Independent Person(s)

- 3.15 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 Monitoring Officer has issued the advertisement for an Independent Person(s). A copy of the Recruitment Pack is attached at Appendix '7', which sets out the role for the Independent Person. It is the intention to appoint two independent persons, if possible, 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.
- 3.16 The draft Regulations have indicated that current and former members of standards committee (including co-opted members) can be appointed as an independent person as long as they cease to be a member prior to 1st July 2012. Accordingly, as it is the intention to dissolve the current Standards Committee on 30th June, applications have been invited from existing lay members of the Standards Committee as well as from members of the public.
- 3.17 Following the same process as applied to the appointment of lay members of the Standards Committee, the Monitoring Officer will be circulating to the Group Leaders the applications for comment. A short list will then be drawn up and interviews held. The Monitoring Officer will then recommend the appointment of at least one Independent Person to the Special Council on 20th June 2012. It is suggested that the appointment not be held for an indeterminate duration and it is recommended that the Independent Person(s) be appointed to hold the appointment for an initial period from 1st July 2012 until 17th May 2013, with an option to extend for a further period until the date of Annual Council in 2014, subject to the agreement of the Council and the Independent Person.

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- 3.18 The Act repeals the statutory duty on the Authority to appoint a Standards Committee. However, there will still be a need to deal with standards issues and case-work, in addition to the other functions which the Authority has delegated to the current committee (e.g. to monitor officer codes and protocols, and policies on anti-fraud and whistle-blowing, etc).
- 3.19 It was previously recommended by the Committee that a stand-alone Standards Committee should be retained for at least the first year of the operation of the new Code to fulfil this role. The Standards Committee will be a normal Committee of the Authority. This means that its membership would normally be governed by the rules on political proportionality unless Council has agreed otherwise. At the meeting of Annual Council on 18th May 2012 it was agreed that the political balance rules would not apply to the current Standards Committee in

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order that each political group could be represented. If Council are minded to continue that practice in relation to the new Standards Committee, it is recommended that the number of Councillors on Standards Committee be retained at 6 (3 Conservative, 2 Labour, 1 Liberal Democrat) in order that it does not become unwieldy when co-opted members are taken into account.

- 3.20 It is not possible to have voting Lay or Parish Councillor representatives on the Committee. However, it is recommended that up to two Independent Members (Lay Members), and up to two Parish Council Representatives are retained on the Committee as co-opted non-voting members. This proposal to retain non-voting representation was supported by the Corporate Governance Working Party on 13th March 2012, and confirmed by Council on 29th March 2012,
- 3.21 Article 9 of the Council's Constitution will need to be amended as attached at Appendix '8'. It is asked that the Committee recommend this to Special Council on 20th June.

Register of Members and Co-opted Members' interests

- 3.22 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 interests and a register for all Parish Councillor interests in its area. The registers must be available for inspection and must be on the Authority's website. Parish Councils will also be required to publish their own registers of interests and publish them to their website if they have one.
- 3.23 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.
- 3.24 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 Member to record Gifts and Hospitality received. This would be in accordance with the Corporate Governance Review Working Group's preference for the current Code of Conduct to form the basis for the new Code of Conduct for Swindon wherever possible,
- 3.25 It is anticipated that requirement to register will begin at the point a new standards regime comes into effect. However, compiling a register cannot begin until regulations have been made defining the Disclosable Pecuniary Interests. The draft Regulations are included in Appendix '1'.
- 3.26 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

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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".

- 3.27 If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting and the detail of the interest can be excluded from the published version of the Register of Members' interests.
- 3.28 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, Standing Orders were amended in the Constitution 2012/13 approved at Annual Council on 18th May 2012 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.
- 3.29 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 Standards Committee. If there needs to be further delegation to an officer then this can be the subject of a further report.

Updates to the Constitution and Review of other Codes and Protocols

- 3.30 It is recommended that The Director of Law and Democratic Services Officer 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.
- 3.31 Updated versions of the Council's Code and Protocols have been approved as part of the New Constitution at Annual Council on 18th May 2012. The Monitoring Officer will carry out a further consultation on the Council's Codes and Protocols, and report back with any recommended changes to the next suitable meeting. However, any changes which are solely related to the Localism Act 2011 and its regulations can be made under the above delegated power if agreed.

4. Alternative Options

- 4.1 Any alternative options are set out in the body of the report.

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5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 The cost of investigating any Code of Conduct complaints referred by to the Monitoring Officer for investigation is met from the External Audit Fees budget. The Council seeks to keep these costs to a minimum and achieve value for money.

Legal and Human Rights Implications

- 5.2 The legal and human rights implications, where applicable, are set out in the body of the report.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 There are no other implications that have been identified as important for this report.

Links to One Swindon, Objectives, Plans and Policies

- 5.4 Monitoring of issues of probity in the Council underpins the Council's plans and policies and the delivery of One Swindon objectives.

Diversity Impact Assessment

- 5.5 A Diversity Impact Assessment has not been completed for this report, as the new approach to dealing with Code of Complaints does not vary significantly to the previous procedure, and variations are in line with the requirements of the Localism Act.

Risk Management

- 5.6 A risk assessment has not been completed in relation this report, as it does as it does not recommend a significant change in Council policy or service. Arrangements for meeting the requirements of the Localism Act and monitoring probity of the Council will ensure that good governance is maintained and protect the reputation of the organisation.

6. Consultees

- 6.1 The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

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8. Appendices

- 8.1 Appendix 1 – Draft Pecuniary Interest Regulations and The Localism Act 2011 and the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 ('the Commencement Order')
- 8.2 Appendix 2 - LGA Template Code
- 8.3 Appendix 3 – CLG Illustrative text for a Member Code of Conduct
- 8.4 Appendix 4 – Revised Members Code of Conduct
- 8.5 Appendix 5 - Code of Conduct Complaint Form
- 8.6 Appendix 6 - Arrangements for dealing with Member Code of Conduct Complaints
- 8.7 Appendix 7 – Independent Person Advertisement and Recruitment Pack
- 8.8 Appendix 8 – Updated Article 9 of the Council's Constitution