

Report of	Meeting	Date
Monitoring Officer (Introduced by the Executive Leader)	Executive Cabinet	21 June 2012

THE STANDARDS REGIME AFTER 1 JULY 2012

PURPOSE OF REPORT

1. To advise Members of the proposed Code of Conduct and complaints procedure to be adopted from 1 July 2012.

RECOMMENDATION(S)

2. That the Executive Cabinet adopt the draft Code of Conduct attached at Appendix 1 to this report for the Council to comply with from 1 July 2012, such adoption to be ratified by Full Council on 17 July.
3. That the Executive Cabinet adopt the proposed complaints procedure attached at Appendix 2 to this report for the administration of complaints made to the Council from 1 July 2012, such adoption to be ratified by Full Council on 17 July.
4. That the Executive Cabinet delegate to the Executive Leader the authority to amend the Code of Conduct to reflect any alteration, addition or amendment introduced by Regulations issued under the Localism Act 2011.
5. That the recruitment procedure for Independent Members to the Standards Sub-Committees be noted.

EXECUTIVE SUMMARY OF REPORT

6. The Localism Act 2011 revokes the existing standards regime and replaces it with a lighter touch more localist scheme. The model Code of Conduct which Councils were obliged to adopt has gone, Councils are required only to have a code of conduct which is compliant with the Nolan Principles.
7. Standards for England has been closed and there is no longer a central body who co-ordinates standards matters, the localist agenda dictating this is a matter for each authority to consider themselves.
8. These changes have been reported to Council before and some action has already been taken on them with the Standards Committee merging with the Audit Committee to become the Governance Committee. Standards will largely be the dealing of complaints only and this will be a function of a sub-committee of Governance.
9. There are a number of issues however which have been delayed in their progress or indeed remain outstanding and for which we have yet to have definitive guidance or Regulations issued by Central Government. We have recently been issued with a draft Code of Conduct which has been prepared by the LGA. However, the Regulations concerning what constitutes a pecuniary interest remain outstanding.
10. Neither has any guidance been issued on an appropriate approach to the administration of complaints.
11. The documents appended for approval are done so to ensure compliance with the legislation, and should be adopted prior to the 1 July. This is however, a Council decision and is subject to ratification at Full Council on 17 July next. It has to be noted that the issue of Regulations will impact on these document and the resolution to delegate authority to the

Executive Leader to make consequential amendments will ensure the continued compliance by the Council.

Confidential report Please bold as appropriate	Yes	No
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Key Decision? Please bold as appropriate	Yes	No
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REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

- Under the terms of the Localism Act 2011 and Statutory Instruments issued under it the Council are obliged to adopt a Code of Conduct that is compliant with the Nolan Principles and a process for the administration of complaints made under the code.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- That the form of Code of Conduct issued by the Department of Communities and Local Government be adopted. This is not felt appropriate as the form of this code is directive in nature, it is in terms of “you will do” as opposed to “I will do”. This makes it less personal to the Members having the appearance of being imposed.

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			

BACKGROUND

- It has previously been reported to Council that it will be obliged to adopt a new Code of Conduct and process for the administration of complaints by 1 July 2012. It was accepted by all members that whilst the approval of a Code of Conduct was a Full Council decision given the timings it would be appropriate for this to be considered by the Executive, with a view to the decision being endorsed by Full Council in July.
- The Code of Conduct attached at Appendix 1 is in the form of a declaration by each member to uphold the Nolan Principles of Selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It goes on to specifically explain how the member will discharge these obligations.
- It is recommended that this Code of Conduct is preferable to the one issued by the Department for Communities and Local Government (attached at Appendix 3). By making the Code a personal commitment by the Member it is seen as an obligation being taken on rather than a burden being imposed.
- That is not to say the CLG code should be wholly dismissed. The wording relating to the registration of interests has been adapted and used within the body of the Code at Appendix 1.
- At present the definition of “pecuniary interest” has not been provided by regulation. This will be circulated to Members as soon as it is received.

20. The procedure for administering complaints contained at Appendix 2 mimics in part the current process. There is still an initial assessment process undertaken by the Council's Monitoring Officer in consultation with an Independent Member, although this assessment is within a defined framework.
21. There is a discretion for the Monitoring Officer and Independent Member to elect to deal with minor matters at this stage, and again the considerations to be taken into account are prescribed within the procedure. It should be noted though that where the Monitoring Officer and Independent Member disagree, the view of the Independent Member is paramount as they are intended to be the views of the public.
22. The complainant may request that their complaint be anonymised. These requests will only be entertained on limited grounds relating to any risk to the complainants health, safety or employment. In assessing this the Monitoring Officer will be reluctant to pass an anonymous complaint without very compelling evidence of need.
23. If a matter is referred for investigation, this will be undertaken by an officer of this Council who will undertake a proportionate but thorough investigation. The investigating officer will prepare a report which will make a finding as to whether there was a breach and provide copies to the subject of the complaint and the complainant for comment.
24. The final report will be forwarded to the Monitoring Officer. Where the report makes a finding of no breach, the MO will consider the report and if it is found to be satisfactory make a Confirmation Decision and notify the subject of the complaint and complainant. If the report is not found to be satisfactory, the MO will refer it back to the investigating officer for reconsideration.
25. Where the report finds there was a breach of the Code, the MO will consider the severity of the breach. If the breach is minor, the MO may in consultation with the Independent Member seek a Local Resolution. This will require the engagement of the complainant and the subject of the complaint and may be in the form of an apology or other remedial action. All parties must agree to the process and undertake any agreed action at its conclusion. Failure to do so will mean the matter is referred to a Hearing Sub-Committee.
26. If the breach is sufficiently severe this will also warrant referral by the MO to a Hearing Sub-Committee.
27. The Hearing Sub-Committee will be drawn from Members of the Governance Committee. There will be at least 2 groups represented on each sub-committee. Although political balance is not required, as a members duty when serving on the sub-committee is to compliance with the Code of Conduct, every effort will be made when assembling a sub-committee to ensure all political views are represented. An Independent Member will also be invited to sit with the Hearing Sub and their views must be taken into account when a decision is reached, both in connection with the determination on breach and on sanction.
28. Independent Members must not have served on the Council in the preceding 5 years either as a Member, a co-opted Member or an officer.
29. If the Hearing Sub-Committee find that there was no breach then no further action will be taken and all parties will be notified of this. If the finding is that the subject of the complaint breached the code of conduct then they will consider the severity of the breach found and consider the appropriate sanction to attach.
30. If a finding of breach of the code of conduct is made it will be usual for the Hearing Sub to publish this finding in a local newspaper and to report it to the Governance Committee for reporting to Full Council. It is open for the Hearing Sub-Committee to conclude that the finding and reporting is sanction enough.
31. Under the regime the sanctions which may be imposed will be less onerous than those under the previous scheme. The Hearing Sub may
 - a. Recommend to a group leader that the subject of the complaint is removed from any or all committees or sub-committees of the Council;
 - b. Recommend that the member be removed from the Executive or lose any portfolio responsibilities;
 - c. Instruct the MO to arrange training for the member;
 - d. Remove the member from all outside body appointments;
 - e. Withdraw Council facilities such as access to a computer, email or intranet be for a period of time; or

- f. Exclude the member from Council offices or other premises other than for the purposes of attending Council, Committee and Sub-Committee meetings for a period of time.
32. Members are asked to note that they are not obliged to adopt all the sanctions available and are not required to adopt them all. However, Members are reminded that these are intended as a sanction for behaviour that has fallen below the adopted standard. The harsher sanctions that interfere with the Members ability to discharge their democratic duties (sanctions e and f above) are only likely to be used for the more serious matters.
 33. Sanctions (a) and (b) can only be recommendations as these are matters for the groups and the Executive Leader, however, there is an expectation that unless there is a good reason the recommendations will be adopted. The remaining matters are for full council and can properly be delegated to the Hearing Sub-Committee for a binding decision.
 34. There is a right of appeal against a finding of the Hearing Sub-Committee. The process is set out in the Arrangements document. Any challenge to the appeal decision should be by way of Judicial Review or to the process a complaint should be made to the Local Government Ombudsman. This is to try to ensure that the complaints are dealt with quickly and there is certainty at the outcome.
 35. The Council are responsible for receiving standards complaints relating to the Parish Councils within the Borough. Whilst each Parish may adopt their own code of conduct it is expect this will mirror the code adopted by this Council. The process for dealing with the complaints will be the same. It is not envisaged that any Parish Members will be appointed to sit on the Standards Sub-Committees this will be reviewed to ensure they process and systems are sufficient to meet the Council's needs.
 36. Complaints that do not progress through initial assessment will be reported (in an anonymised form) to Governance Committee. This is to enable feedback to be provided on the approach taken by the MO and the Independent Member and ensure that the complaints are being properly dealt with.
 37. There has been no guidance issued by central government either on the nature of pecuniary and special interests nor on the expected process to be followed when a complaint is received. The complaints process is therefore subject to amendment if such regulation is issued.
 38. It should be noted that recently the LGA have made representations to the CLG concerning the commencement date of the new standards regime. As no guidance has been given concerning the definition of pecuniary interest it is unreasonable to expect members to be bound by a code which references them. No response has yet been received to this representation and at present the timetable to the 1 July stands.

CRIMINAL LIABILITY

39. Whilst this does not form part of the new Code of Conduct, members should be aware of the criminal liability imposed in connection with failure to comply with their obligations in relation to the disclosure of pecuniary interests and their participation in relation to matters in which they have a pecuniary interest. The following are offences punishable by summary conviction:-
 - a. Failing to
 - i. **Register** a disclosable pecuniary interest with the MO within 28 days of election
 - ii. **Disclose** an none registered pecuniary interest in an issue being considered at a meeting of the Council
 - iii. **Register** a disclosable pecuniary interest within 28 days of its disclosure at a Council meeting
 - iv. **Register** a disclosable pecuniary interest within 28 days of it becoming apparent to the member that the interest exists.

It is also an offence, to knowingly or recklessly provide information a member knows to be false in registering or disclosing a pecuniary interest.
 - b. Participating in a discussion and/or vote at a Council meeting on an issue in which the member has a disclosable pecuniary interest.

- c. Taking any steps in relation to a matter in which the member has a disclosable pecuniary interest.

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- 40. The Council will not pursue these criminal matters under the standards regime (although they will pursue standards complaints on these issues) but will refer any such complaint to the police for investigation.

PREDETERMINATION

- 41. Predetermination is not a standards issue and does not fall to be regulated by the Code of Conduct. The Localism Act has however, extinguished the common law rule and introduced a statutory approach. Members are entitled to have a predisposition to an issue. It is recognised that in many matters it would be impossible not to form your own view and indeed, some decisions may relate to specific issues a member has campaigned on to be elected in the first place.
- 42. A Member is not entitled to have a closed mind on an issue. In other words, they are not allowed to approach any decision in a frame of mind where nothing would change their view.
- 43. Further guidance will be provided to Members on this matter.

IMPLICATIONS OF REPORT

- 44. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	X	Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

- 45. There are no financial implications in budgetary terms associated with this report.

COMMENTS OF THE MONITORING OFFICER

- 46. As per the report. Since the drafting of the report, draft regulations concerning pecuniary interests has now been circulated. Additional information will be provided to members in the near future.

CHRIS MOISTER
MONITORING OFFICER

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Monitoring Officer	5160	28 May 2012	***