

Report of the City Solicitor

Report to General Purposes Committee

Date: 9th May 2012

Subject: New standards arrangements under the Localism Act 2011

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The purpose of this report is to present proposals in relation to new conduct arrangements for Members under the Localism Act 2011.
2. Group Whips established a Cross Party Working Group to consider the requirements of the Act and produce detailed proposals. Whips have endorsed the proposals presented in this report and the associated documents.
3. The proposals presented in this report are contained in the documents attached as follows:
 - A Members' Code of Conduct – at Appendix 1
 - Terms of Reference for a Standards and Conduct Committee – at Appendix 2
 - Procedure Rules for the handling of complaints that a Member may have failed comply with the Code of Conduct – at Appendix 3

Recommendations

4. General Purposes Committee is asked to recommend that the proposals in this report, and the documents attached as appendices 1, 2 and 3, be put to the Annual Meeting for approval and to be with effect from 1st July 2012.
5. General Purposes Committee is also asked to consider and recommend to full Council that the City Solicitor be given delegated authority to amend the Code of Conduct, in

consultation with Group Whips, in light of pending Regulations which will define Disclosable Pecuniary Interests.

1 Purpose of this report

1.1 The purpose of this report is to present proposals in relation to new conduct arrangements for Members under the Localism Act 2011.

2 Background information

2.1 The Localism Act 2011 (the Act) requires a relevant authority¹ to promote and maintain high standards of conduct by members and co-opted members of the authority. As part of this duty a relevant authority must adopt a code of conduct dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity², and that code must be consistent with the seven 'Nolan' principles of standards in public life. These are:

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

2.2 The code of conduct must set out the authority's requirements for the registration and disclosure of pecuniary and non-pecuniary interests. The definition of a 'disclosable pecuniary interest' (which must be registered and restrict members involvement in meetings) will be defined in Regulations issued by the Secretary of State. The Council can add to the provisions in the Localism Act regarding the registration and declaration of disclosable pecuniary interests, but nothing in its code of conduct can override these sections.

2.3 The section "Register of Interests" provides that the Monitoring Officer of a relevant authority must establish and maintain a register of interests of members and co-opted members of the authority.

2.4 Where a complaint is made that a Member has:

- Failed to notify the Monitoring Officer of their disclosable pecuniary interests within 28 days;
- Taken part in the discussion or vote on a matter in which they have a disclosable pecuniary interest, or fail to disclose such an interest to a meeting which is not included on the register; or
- Knowingly or recklessly provided false or misleading information in relation to their pecuniary interests,

the handling of the complaint will be the responsibility of the Police.

¹ Generally in this chapter the definition of a 'relevant authority' includes County Councils, District Councils and Parish Councils. However, in certain sections Parish Councils are excluded from the definition.

² Baroness Hanham has clarified that where the relevant authority has appointed a member to represent the authority on an outside body, if there is a complaint about the councillor, the council is still responsible for them, and as such complaints of this nature would be considered to be within the scope of the adopted complaints handling process.

- 2.5 For other complaints the Council must put in place arrangements under which, written allegations that a member has not complied with the authority's code of conduct, can be considered, and decisions taken. This includes allegations against parish councillors in their area³.
- 2.6 After a relevant authority has considered an allegation of misconduct, but before taking a decision, the authority must seek the view of an appointed Independent Person. The authority is required to appoint at least one Independent Person; this must be done following an open advert and application and the appointment made by the majority of members at Full Council. Transitional arrangements are anticipated to allow our existing Independent Members of the Standards Committee to be appointed, so long as they are no longer Members of the Standards Committee at the time of their appointment.
- 2.7 DCLG have advised that the standards and conduct arrangements will commence on the 1st July 2012. Officers are currently working to a timetable linked to approval of the new arrangements at the Annual Council meeting, and for those arrangements to be effective from the 1st July. However to allow sufficient time to carry out a recruitment process for the Independent Person, it is proposed that the Independent Person is appointed at the meeting of full Council on 11th July 2012.

3 Main issues

- 3.1 In January 2012 a cross party working group⁴ was established to consider how the authority might best address the duties relating to Member Conduct in the Localism Act. As part of those deliberations the working group was mindful of the need to reflect the high priority which the Authority places on good conduct and behaviour and also ensure that the complaint handling processes adopted enable the speedy resolution of complaints.
- 3.2 Working group members have consulted widely with group colleagues and presented final draft proposals to all group whips in March 2012, which received unanimous cross party support.

Code of Conduct

- 3.3 Attached at Appendix 1 is a Code of Conduct for General Purposes Committee's consideration. The code is consistent with the general principles of public life and in respect of other requirements of the Act relating to registration and declaration of pecuniary interests and interests other than pecuniary interests (i.e. those interests not relating to money or finances). General Purposes Committee is asked to recommend approval of the Code to full Council.
- 3.4 Since this code of conduct was considered by Whips in March, both the Local Government Association and DCLG have issued example codes of conduct for authorities to consider on 11th April 2012. These documents have been reviewed

³ The Government recognises the administrative limitations of parish councils and therefore have concluded that the relevant district or unitary council should administer the scheme for them.

⁴ Councillors Nash, Latty, Campbell, Leadley and D Blackburn

by the Head of Governance Services, and it is considered that all the elements are adequately covered by the draft Leeds City Council Code of Conduct.

- 3.5 However, it may be appropriate for the Standards and Conduct Committee (see below) to consider the content of these documents in more detail when they review the Authorities local codes and protocols⁵ after 1st July 2012.
- 3.6 Members of the General Purposes Committee will note that the definition of a 'Disclosable Pecuniary Interest' is not currently included in the draft Code of Conduct at Appendix 1. This is because the relevant Regulations have not yet been issued by the Secretary of State.
- 3.7 General Purposes Committee is asked to consider and recommend to full Council that the City Solicitor be given delegated authority to amend the Code of Conduct, in consultation with Group Whips, in light of pending Regulations which will define Disclosable Pecuniary Interests.
- 3.8 As part of the new arrangements it is proposed that the codes and protocols relating to:
- Member/Officer Relations;
 - Roles of Members and Officers in Decision Making;
 - Determining Planning Applications; and
 - Determining Licensing Applications,

should be withdrawn and reviewed as a matter of urgency by the new Standards and Conduct Committee after 1st July 2012. The Member Working Group also considered that the Joint Plans Panel and the Licensing Committee should be involved in the review of the codes and protocols relating to their functions.

- 3.9 This work would be consistent with the new statutory duty placed on the authority to promote and maintain high standards of conduct. The review would be able to consider the content and status of codes and protocols and the extent to which they might be regarded as supplementary to the code or simply guidance to assist in interpretation.

Standards and Conduct Committee

- 3.10 Group Whips propose thorough this report that full Council delegates functions in relation to standards to a Council committee. This will be necessary in relation to considering complaints and making decisions on complaints that have been investigated, as it would be impractical for full Council to discharge this function.
- 3.11 The Standards and Conduct Committee and its Sub-Committee would have two main, and distinct, roles and responsibilities:

⁵ E.g. the Code of practice for determining Planning Applications and the Protocol on Member/Officer Relations.

- Responsibility for functions conducive to fulfilling the authority's duty to promote and maintain high standards of conduct amongst its members and co-opted members; and
- Responsibility for functions in relation to receiving and considering written allegations of misconduct against City and Parish Councillors, and making recommendations for appropriate action to full Council, Group Whips, or the Leader.

- 3.12 The proposed Terms of Reference for the 'Standards and Conduct Committee' are attached at Appendix 2. General Purposes Committee is asked to recommend approval of the appointment of a Standards and Conduct Committee to full Council.
- 3.13 The replacement Standards and Conduct Committee would be an ordinary Council committee appointed under Sections 101 and 102 of the Local Government Act 1972 and would therefore be subject to the rules around political balance. It will also be possible for such a committee to have substitute arrangements, although Group Whips are of the view that, as the decisions the committee will need to be based on a detailed understanding of the code of conduct, it would be appropriate that substitutes be drawn from a pool of trained members.
- 3.14 The Group Whips are also of the view that it would be appropriate for a Parish Councillor (who is not a dual hatted Member) to be present at meetings of the Standards and Conduct Committee when the Committee is considering a complaint against a Parish Councillor⁶. However, according to the Act, this co-opted member would not have a vote. Whips were also of the view that it might be appropriate to pay the expenses of the Parish Councillor in relation to any meetings they are required to attend. The Independent Remuneration Panel will be required to give further consideration of this matter and will report to Council in due course.
- 3.15 Group Whips are of the view that the size of membership of the Standards and Conduct Committee should be in the order of seven Members and that this, so far as practicable, should provide for membership (including alternate membership through substitute arrangements) from all political groups.
- 3.16 Group Whips are also of the view that, in due course, the Standards and Conduct Committee should establish a sub committee to deal with any complaints which, following attempts to achieve resolution informally, require formal resolution. Whips considered that a membership of three (not all from the same political group and at least one Member being from the same political group at the subject Member) would be appropriate, along with an additional non-voting Parish Member to deal with the formal resolution of complaints against Parish Councillors. The Chair of the Sub-Committee would be elected on the day of the meeting by the other Members present – although the Chair should not be from the same group as the subject Member.

⁶ The two current Parish Members of the Standards Committee have been invited to fulfil this role after the 1st July 2012.

- 3.17 The proposed Standards and Conduct Committee would not have the same powers and functions in relation to complaints as the current Standards Committee, as these come directly from legislation. Instead the committee would have powers to make a finding of whether or not there has been a failure to comply with the Members' Code of Conduct and to make recommendations to others in respect of the complaint.
- 3.18 A list of sanctions was considered by the Member Working Group. These were derived from advice provided to the Association of Council Secretaries and Solicitors by Mr Clive Sheldon QC; that advice indicates that the following limited sanctions are available to the authority:
- A formal letter to the Councillor found to have breached the Code from the Chair of the Standards and Conduct Committee;
 - Formal censure by a motion of the full Council; and
 - Removal by the authority of the Member from Committee(s) subject to statutory and constitutional requirements.

Complaints handling process

- 3.19 The authority is required to have in place arrangements under which allegations can be investigated and decisions on allegations can be made. Group Whips have endorsed a new complaints procedure which is presented at Appendix 3. General Purposes Committee is asked to recommend this procedure to full Council for approval.
- 3.20 The proposed procedure will enable Members to be fully aware of the complaint from the date that it is received, and will enable them to attend the committee meeting to present their case before the Standards and Conduct Committee make a decision on a matter.
- 3.21 The procedure provides for complaints to be initially received by the Monitoring Officer or their nominee rather than through the corporate complaints process. The Monitoring Officer will then decide whether the complaint is 'valid' or not i.e. whether it is a complaint about a potential breach of the code of conduct and whether the complaint is about a Leeds City Councillor, voting co-opted member or relevant Parish or Town Councillor (rather than for example a service based issue).

Independent Person

- 3.22 The Member Working Group have considered the role description and person specification for the role of the Independent Person, and a summary of their role in the complaints handling process is attached as Annex 1 to the proposed complaints procedure.
- 3.23 Due to time constraints, the recruitment process for an Independent Person has already begun and the advertisement is currently visible on the Council's website.

Applications have also been sought from people nominated by Members. The closing date for applications is Monday 14th May 2012.

- 3.24 Members will then shortlist the applications and carry out any interviews, and an initial recommendation for appointment will be made to General Purposes Committee on 25th June 2012. General Purposes Committee will then be asked to make a recommendation for appointment to full Council for consideration at the meeting on 11th July 2012.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Extensive consultation has taken place with Whips and the Member Working Group from February 2012 onwards. Members of the Working Group were also responsible for briefing other Members of their political groups on the proposed new arrangements and for presenting their comments back to the Whips.
- 4.1.2 A series of training sessions on the new Code of Conduct have been arranged for Leeds City Council Members during June and early July.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no implications for equality and diversity or cohesion and integration arising from this report.
- 4.2.2 Equality and diversity issues are addressed by the principles of selflessness, objectivity and leadership and by the associated explanations.

4.3 Council policies and City Priorities

- 4.3.1 The proposed new standards arrangements are consistent with the principles in the Code of Corporate Governance, particularly principle three "Good Conduct and Behaviour".

4.4 Resources and value for money

- 4.4.1 Special Responsibility Allowances will no longer be payable to Independent and Parish Members of the current Standards Committee after 1st July 2012, saving £14,374.88 per annum. This will be slightly offset by the fee payable to the Independent Person which is anticipated to be in the region of £2,500 per annum, and by any expenses which may be payable to co-opted parish members.
- 4.4.2 Current arrangements also provide for any investigations referred by Assessment Sub Committees to be undertaken by an external solicitor – typically such investigations have amounted to several thousand pounds each. However under the new arrangements such referrals will no longer be necessary.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The proposed new standards arrangements as set out in this report are compliant with the requirements of Chapter 7 of the Localism Act 2011.

4.5.2 No part of this report is confidential or exempt, and the report relates to Council functions and so the decision is not open to call in.

4.6 Risk Management

4.6.1 There is a risk that if the arrangements are not approved at the Annual Meeting there will be a short gap of seven working days between Chapter 7 of the Localism Act 2011 coming into force and the arrangements being adopted at the next Council meeting on 11th July 2012. In order to mitigate this risk it is being proposed that the arrangements are approved at the Annual Meeting to come into force on 1st July 2012.

4.6.2 The Monitoring Officer has considered the risk of not appointing the Independent Person until 11th July 2012 but has concluded that this risk is acceptable given that it is unlikely that we will require the services of the Independent Person in relation to any complaints during the seven working days prior to the meeting of full Council. This delay also allows adequate time to carry out a public recruitment exercise, followed by short listing and interviews if required.

5 Conclusions

5.1 The Whips established a Working Group to consider the requirements of the Act and produce detailed proposals. The Working Group reported back to the Whips at their meeting on 27th March 2012. Whips have endorsed the proposals presented in this report and the associated documents..

5.2 The documents for General Purposes consideration are attached as follows:

- A Members' Code of Conduct – at Appendix 1
- Terms of Reference for a Standards and Conduct Committee – at Appendix 2
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6 Recommendations

6.1 General Purposes Committee is asked to recommend that the proposals in this report, and the documents attached as appendices 1, 2 and 3, be put to the Annual Meeting for approval and to be with effect from 1st July 2012.

6.2 General Purposes Committee is also asked to consider and recommend to full Council that the City Solicitor be given delegated authority to amend the Code of Conduct, in consultation with Group Whips, in light of pending Regulations which will define Disclosable Pecuniary Interests.

7 Background documents⁷

- 7.1 Chapter 7, Localism Act 2011, available at:
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>
- 7.2 Advice from Clive Sheldon QC in the matter of the Localism Act, available at:
<http://www.acses.org.uk/news/standards-%E2%80%93-sanctions-and-independent-persons-press-release>
- 7.3 Notes of the Whips meeting, 27th March 2012
- 7.4 Illustrative text for local code of conduct, Department for Communities and Local Government, available at:
<http://www.communities.gov.uk/publications/localgovernment/localcodeconduct>
- 7.5 Template code of conduct issued by the Local Government Association

⁷ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.