

Subject:	Review of the Code of Conduct for Members		
Date of Meeting:	15 December 2016 15 November 2016 – Audit & Standards Committee		
Report of:	Head of Law and Monitoring Officer		
Contact Officer:	Name:	Abraham Ghebre-Ghiorghis	Tel: 29-1500
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To comply with its obligations under the Localism Act 2011, the Council adopted a new Code of Conduct for Members in July 2012 and a Procedure for dealing with complaints shortly thereafter. The Code of Conduct for Members was last reviewed in 2014 by a cross party working group and that group's recommendations adopted by full Council.
- 1.2 To ensure the Code of Conduct for Members' ongoing effectiveness, the Audit and Standards Committee directed at its last meeting that a further cross party working group be convened to review the Code of Conduct for Members and related documents and to recommend any changes which it considered necessary to update and/or clarify the existing arrangements.
- 1.3 This Report seeks the Committee's approval for a range of proposed amendments, all of which were agreed unanimously by the cross party working group of Members, Independent Persons and officers. The rationale for the proposed changes are detailed in the body of this Report.
- 1.4 This Report is initially for consideration by the Audit and Standards Committee, whose recommendations will be referred to Council for approval.

2. RECOMMENDATIONS:

- 2.1 That Audit and Standards Committee consider the draft revised Code of Conduct for Members and the Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members set out in Appendices 1 and 2 respectively and approve Appendix 2 while referring Appendix 1 – with any further recommended amendments – to Council for approval.
- 2.2 That Council approve the draft revised Code of Conduct for Members referred by Audit and Standards Committee, for implementation with immediate effect.

- 2.3 That Council grant delegated authority to the Monitoring Officer to take appropriate measures to implement the revised Code and to assist existing and new Members with understanding and applying it, including via training.

3. CONTEXT/ BACKGROUND INFORMATION

PROPOSED CHANGES TO THE CODE OF CONDUCT: additional clarity regarding the application of the Code and the option of members voluntarily declaring those interests which they are not otherwise required to declare, as well as changes to how interests are described in the Code

- 3.1 It is proposed that the Code be amended so as to create an expectation that the Independent Persons appointed to the Audit and Standards Committee observe the Code of Conduct. This is considered to be appropriate given the role of the Independent Persons appointed to this Committee.
- 3.2 It is also proposed that the Introduction to the Code be amended so that it explicitly clarifies the Code's application to meetings of the Council, its committees and sub committees only. This change makes the Council's current arrangements clearer so as to avoid an expectation - as happened recently and gave rise to a member complaint about a perceived failure to declare a Disclosable Pecuniary Interest at a working group - that the Code requires members to formally declare their interests at any informal meeting or gathering, which it does not.
- 3.3 It is also proposed that the current paragraph 1.8 of the Code be amended so as to clarify the expectation that all members who are bound by the Code must co-operate with any investigation - including but not only any investigation into an alleged breach of the Code - as well as with any investigation that takes place into the alleged unauthorised disclosure of confidential information.
- 3.4 A further proposed change is recommended in the form of specific reference to the practice of members choosing to voluntarily declare interests or facts which others may potentially perceive to be relevant to their decision-making, despite there being no requirement that they be declared.
- 3.5 Further structural changes (not substantive amendments) are also recommended to ensure that the Code of Conduct is made as clear as possible. The first of those is the re-naming of all interests caught by the Code which are not Disclosable Pecuniary Interests as 'Other Interests'. Dealing with all types of interests within the Code, at paragraph 3.2, is considered to make the position as to interests easier for members to understand. So too is the use of the term 'prejudicial interest' in order to describe any interest which requires members to leave the room once they have declared their interest as well as the term 'non-prejudicial interest' which describes an interest which allows members to stay and participate in decision-making once they have declared the relevant interest.
- 3.6 Other amendments to the Code shown by tracked changes are considered to be of a relatively minor nature. They include specific reference to the preference that applications for a dispensation be received by the Monitoring Officer in writing and prior to meetings as well as a reminder that it is for Members to keep their interests under review. They also include greater clarity around the expectation

that the Code will not apply to those Members who are acting or appearing in the view of a reasonable person to be acting in a purely private capacity.

4. PROPOSED CHANGES TO THE PROCEDURE FOR DEALING WITH ALLGEGATIONS OF THE BREACHES OF THE CODE OF CONDUCT FOR MEMBERS: specific reference to the recourse which a subject member has to an Independent Person and a revised set of arrangements regarding the potential for the informal resolution of complaints.

- 4.1 As amended, the Procedure makes specific reference to the potential (which is specifically provided for in the Localism Act) for a member who is the subject of a complaint to consult with one of the Independent Persons. It also clarifies that the provisions as to the publicity of complaints pending their determination apply to all parties to the matter.
- 4.2 The suggested amendments also clarify the Monitoring Officer's existing authority to resolve complaints informally at preliminary assessment stage while also permitting him to resolve matters in this way once formal investigation has commenced where he considers that doing so is in the public interest and has first consulted with one of the Independent Persons.
- 4.3 A further change to existing arrangements is proposed, namely giving the Monitoring Officer the discretion to resolve matters informally where he considers that doing so is in the public interest and has consulted with one of the Independent Persons, this even once the formal investigation has been completed.
- 4.4 The objective of these proposals is to allow the Monitoring Officer the facility to resolve matters informally where there are clear public interest reasons for doing so, this provided that he has considered representations from the parties and consulted with one of the Independent Persons. An example of this might be where matters have proceeded apace since a complaint was first made and then referred for formal investigation and although the member concerned has expressed regret and offered an apology the affected party is not minded to accept it. The Working Group considered that need for the public interest to take precedence was not necessarily compatible with a rule which binds all parties to a hearing with all of the attendant resource and cost implications and without regard to the particular facts of the case.
- 4.5 Substantive breach: although the Monitoring Officer will normally refer matters to a Standards Panel where an investigator's report has concluded that a substantive breach has occurred, it is proposed that he may exceptionally decide that it is not in the public interest to refer the matter to a Panel. This exercise of his discretion is to be enacted only having first 1) recommended to the parties that the matter be resolved informally and given them the opportunity to make representations and also 2) consulted with one of the Independent Persons, who in addition has explicitly agreed with the merits of the Monitoring Officer's recommended course of action. The latter has been designed as an additional safeguard which is appropriate given the stage which proceedings will at that point have reached. This measure aims to provide reassurance to all parties by providing that this additional step is built into this particular situation so as to ensure that fairness is achieved.

- 4.6 Technical but minimal breach: the proposed changes remove the parties' right to have a finding of a technical but minimal breach heard by a Standards Panel. Again the Monitoring Officer may recommend informal resolution to the parties, having first consulted with the Independent person. These amendments make explicit his discretion to resolve matters informally in cases where one or more party has indicated that they nonetheless wish a Panel to be convened.
- 4.7 No breach: the suggested wording brings the position where there is a finding that no breach has occurred into line with that described above in relation to a finding of a technical but minimal breach: the Monitoring Officer is given an explicit discretion to resolve matters informally, without referral to a Panel, when having consulted with one of the Independent Persons he considers that the public interest is best met by such an outcome.

5. OTHER MATTERS

5.1 Flowcharts

- 5.2 The Working Group also considered two flowcharts, which aim firstly to assist Members in deciding whether they have an interest (appendix 3) and secondly to clarify the process of determining complaints (appendix 4). These two flowcharts - amended to reflect the proposed changes - are attached. If the amendments recommended in this report are agreed they will be circulated for illustrative purposes.

5.3 Member Training

- 5.4 Training of members of the Audit and Standards Committee only was carried out during July 2016.
- 5.5 Refresher training for all Members on the Code - and its interaction with predetermination and/or bias – is considered to be a key means of ensuring that Members are as well-equipped as possible to participate in democratic decision-making in a compliant way.
- 5.6 Training for all members on the revised Code will therefore be scheduled to take place once the Code (and for completeness the accompanying Procedure) has been considered and agreed by full Council.

6. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 6.1 The Council is obliged under the Localism Act to make arrangements for maintaining high standards of conduct among members and to make arrangements for the investigation of complaints. The proposals outlined in this report and in the appended documents are made with this aim in mind. No alternative options are mooted.

7. COMMUNITY ENGAGEMENT & CONSULTATION

- 7.1 This report focuses mainly on internal rules and procedures and as a result no need to consult with the local community has been identified.

8. CONCLUSION

- 8.1 Members are asked to note the contents of this Report and to approve the Procedure as amended while recommending the suggestions for amendments to the Code of Conduct for Members (which forms part of the Council's Constitution) to full Council for formal approval.

9. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 10.1 There are no additional financial implications arising from this report

Finance Officer Consulted: Jeff Coates

Date: 04/11/2016

Legal Implications:

- 10.2 These are covered in the body of the report

Lawyer Consulted: Victoria Simpson

Date: 18 October 2016

Equalities Implications:

- 10.3 There are no equalities implications arising from this report

Sustainability Implications:

- 10.4 There are no sustainability implications arising from this report.

Any Other Significant Implications:

- 10.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. Code of Conduct for Members – showing proposed amendments as tracked changes
2. Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members – showing proposed amendments as tracked changes
3. Flowchart: Guide for Members: do I have an interest?
4. Flowchart: the Procedure for Dealing with Member Complaints

Documents in Members' Rooms:

1. None.

Background Documents:

1. None

