

Council

19 July 2012

Agenda Item 18

Brighton & Hove City Council

Subject:	Standards Update
Date of Meeting:	19 July 2012 26 th June 2012 – Audit & Standards Committee
Report of:	Monitoring Officer
Contact Officers:	Abraham Ghebre-Ghiorghis Tel: 29-1500 abraham.ghebre-ghiorghis@brighton-hove.gov.uk Elizabeth Culbert Tel: 29-1515 elizabeth.culbert@brighton-hove.gov.uk
Ward(s) affected:	All

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The Localism Act 2011 makes fundamental changes to the regulation of standards of conduct for elected Members. The date for these changes to come into force is 1st July 2012. Regulations in relation to the commencement of the new arrangements and the registration of interests for Members and co-opted Members were not made until 8th June 2012, presenting local authorities with a difficult timetable for implementation.
- 1.2 This report updates the Audit and Standards Committee on the requirements of the new regime and the work of the Cross Party Working Group on Standards. The report proposes a new code of conduct for Members and a new complaints procedure, based on the requirements of the Localism Act and the new Regulations.

2. Recommendations

That the Audit and Standards Committee:-

- 2.1 Recommends to Council the adoption of the new Code of Conduct for Members as set out at **Appendix One**;
- 2.2 Recommends to Council the adoption of a simplified Complaints Procedure as set out at **Appendix Three**;
- 2.3 Instructs the Monitoring Officer to advertise a vacancy for the appointment of two Independent Persons in accordance with statutory requirements and to convene an appointment Panel of Members in accordance with the proposals in paragraphs 3.20 and 3.21 of the report;

- 2.4 Instructs the Monitoring Officer to put in place arrangements for training for Members on the new Code and arrangements for the register of Members' interests;
- 2.5 Instructs the Monitoring Officer to consult with the Parish Council and to report to the next meeting of the Audit and Standards Committee with details of the Code of Conduct to be adopted by the Parish Council and the arrangements for the register of Parish Council interests.

3. Background

3.1 Audit and Standards Committee

3.2 The Localism Act 2011 (the Act) repeals the statutory requirement for Councils to have a Standards Committee. Current co-opted Independent Members will cease to hold office from 1st July 2012 and a new category of Independent Persons, who are to be consulted at various stages, must be appointed.

3.3 The Council remains under a duty to promote and maintain high standards of conduct for its elected and co-opted Members. The Council must also adopt a system to investigate and assess standards issues. For this reason, the Council has agreed to operate an Audit and Standards Committee which, whilst not a statutory requirement, will enable the Council to fully meet its responsibilities in relation to standards matters.

3.4 The new arrangements for the standards regime are due to take effect from 1st July 2012. The interim arrangements in Brighton & Hove (applicable to the first meeting of the Audit and Standards Committee on 26th June 2012) were approved by Council on 26th April 2012 and are set out below for ease of reference:-

a) the merger of the Audit and Standards Committee takes effect immediately following Annual Council on 17th May 2012;

b) the Committee, as an interim measure, adopts a two part agenda starting with standards followed by audit;

c) the Independent Member chairs the Committee when sitting as a Standards Committee and a Councillor chairs the meeting when the Committee acts as an Audit Committee;

d) the existing Independent Members (3) and Parish Council representatives (2) continue as members of the committee with voting rights on standards matters;

e) the above arrangements cease to operate once the provision of the Localism Act relating to standards come into force;

f) Once the new regime is in force, the Audit and Standards Committee is authorised to adopt such arrangements (including chairing) as are consistent with the requirements of the law and having regard to the advice of the Monitoring Officer and the Director of Finance.

3.5 Code of Conduct

3.6 The current ten General Principles and Model Code of Conduct are repealed under the Act and the Council is required to adopt a new Code of Conduct governing elected Members and co-opted Members when acting in that capacity.

The Council's new Code of Conduct must, when viewed as a whole, be consistent with the following seven principles:-

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

- 3.7 The Council has a wide discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the above principles and meets the statutory requirements regarding disclosable pecuniary interests.
- 3.8 A Cross Party Working Group was set up to consider the best approach for the Councillor Code of Conduct in Brighton & Hove. The Working Group met on three occasions, most recently on 12th June 2012, to consider the range of model Codes being promoted by different organisations and the new interest provisions.

The model Codes considered were:-

- The LGA draft Code of Conduct;
 - The CLG draft Code of Conduct;
 - The East Sussex Authorities draft Code of Conduct.
- 3.9 The Working Group did not consider that the draft LGA and CLG Codes (included at **Appendix Two** for information) provided adequate guidance for Members or for officers in applying the Code. The model worked up by the East Sussex Authorities was considered by the Working Group to be more helpful, providing clear guidance to Members regarding their obligations, rather than statements of general principle.
- 3.10 A draft Code of Conduct for Brighton & Hove, incorporating the views and comments of the Cross Party Working Group, is attached at **Appendix One**. The key change from the current Code that all Members will need to be aware of relates to the disclosure of interests in Part 2 of the Code. The concepts of personal and prejudicial interests are replaced with 'Disclosable Pecuniary Interests' (DPIs) and 'Other Disclosable Interests'. DPI's are defined in the Disclosable Pecuniary Interests Regulations 2012 and a Member's failure to comply with the requirements is a criminal offence. A DPI must be registered or declared at the meeting and a Member may not participate in any discussion on that matter at a meeting. In order to ensure that there are no allegations of bias or undue influence, the draft Code also proposes that the Council's Standing Orders require a Member with a DPI to leave the room for that item. The categories of DPI that are included in the draft Brighton & Hove Code (at Part 2 Section 8) are taken directly from the new Regulations to ensure clarity for Members in relation to their legal obligations.
- 3.11 In addition to DPI's, the draft Code for Brighton & Hove includes a category of 'Other Disclosable Interests'. These are interests that are not Disclosable Pecuniary Interests as defined in the new Regulations and do not therefore carry

criminal sanctions. This category broadly picks up what was covered by the old category of personal interests, but with a narrower scope to be consistent with the new approach to the Code. Other disclosable interests must be disclosed at the meeting but there is no requirement not to participate or to leave the meeting.

- 3.12 Throughout the new disclosure of interests provisions, the definition of a 'relevant person' is much narrower than in the previous Code and applies only to a spouse or civil partner or someone a Member is living with as if they are a spouse or civil partner. (The previous provisions applied to any family member or 'close associate' and their employers).
- 3.13 Audit and Standards Committee is asked to note the work of the cross party Working Group and to recommend the draft Code at **Appendix One** to full Council for approval at its 19th July 2012 meeting.

3.14 Dealing with misconduct complaints

- 3.15 The Act requires the Council to adopt arrangements for dealing with complaints about a breach of the Code of Conduct by both Council and Parish Council Members. The arrangements must set out the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the Code of Conduct.
- 3.16 The Council currently has very detailed procedures for assessing complaints and, under the new regime, it will be possible to simplify and shorten them. There will no longer be a requirement for separate Referrals, Review and Hearings Sub-Committees. A key new flexibility is the option of delegating to the Monitoring Officer, in consultation with the Independent Member, the initial consideration as to whether a complaint requires investigation.
- 3.17 Officers have considered the current cumbersome investigation and assessment process and have produced a streamlined process, with general principles, as set out at **Appendix Three**. This reflects the limited sanctions that are now available to Standards Committees in relation to breaches of the Code.
- 3.18 Where a failure is found, the range of actions the authority can take is limited and must be directed at securing the continuing ability of the authority to discharge its functions effectively. In practice, this can include the following:-
- Reporting the findings to Council for information;
 - Recommending to Group Leaders removal from Committees/Sub-Committees;
 - Formal letter to the Councillor found to have breached the Code;
 - Press release/other publicity.
- 3.19 A failure to register or declare, without reasonable excuse, Disclosable Pecuniary Interests is a criminal offence under the Act and a matter for police investigation rather than for the Council's Complaints Procedure. The Magistrates Court is empowered, on conviction to impose a maximum level 5 fine (currently £5,000) and an order disqualifying the person from being a Member of the relevant authority for up to five years.

3.20 The proposed complaints process was considered by the Cross Party Working Group on 12th June. The Working Group agreed the proposals, subject to the addition of an appeal process in cases of a finding of a breach. The appeal would be a review of the process followed rather than a re-hearing. Audit and Standards Committee is asked to recommend the Complaints Procedure and General Principles at **Appendix Three** to full Council for approval at its 19th July 2012 meeting.

3.21 Independent Person

3.22 The arrangements adopted by the Council must include provision for the appointment of at least one Independent Person. The Independent Person(s) must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all Members of the Council. The Act excludes existing Independent Members from becoming an Independent Person and therefore the Council will be required to advertise and appoint to the new posts. The Independent Person can be a co-optee on the Audit and Standards Committee but cannot vote.

3.23 It is recommended that the Monitoring Officer be instructed to advertise a vacancy for two new positions of Independent Person and that a Panel comprising the Chair of the Audit and Standards Committee and three other elected Members of the Committee be set up to shortlist and interview candidates, and to make a recommendation to Council for appointment. In view of the scope and focus of the new Audit and Standards Committee it is proposed that applicants are sought who will have an interest and ability to develop expertise in both Audit and Standards matters.

3.24 Parish Councils

3.25 Under the Act, Parish Councils are required to adopt their own Code of Conduct relating to their Members and co-opted Members. The Parish Council has the option of adopting the same Code of Conduct as its principal authority or its own Code. NALC (the National Association of Local Councils) has produced its own draft Code for local councils to consider.

3.26 If a complaint is made about an alleged breach of the Code by a Member or co-opted Member of the Parish Council, it is the responsibility of the principal authority to investigate and determine the complaint. Where a breach is determined to have occurred it is for the Parish Council to decide whether to take action and what action to take. A register of interests must also be maintained by the Monitoring Officer in relation to Parish Council Members and co-opted Members and must be available on the Council's website.

3.27 In view of the ongoing involvement of the Council in investigating and determining Parish Council complaints and in maintaining the register of interests for the Parish Council, it is proposed that the Monitoring Officer work with the Chair of the Parish Council to establish which Code they will be adopting and to make arrangements for the register of Parish Council interests and to report those arrangements to the next meeting of the Audit and Standards Committee.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 The Cross Party Working Group on Standards has been consulted on this report, including both elected and Independent Members.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs associated with the advertising for independent members and associated expenses can be met within the allocated budget

Finance Officer Consulted: Anne Silley

Date: 31/05/12

Legal Implications:

- 5.2 These are set out in the body of the report

Lawyer Consulted: Elizabeth Culbert

Date: 19/06/12

Equalities Implications:

- 5.3 None

Sustainability Implications:

- 5.4 None

Crime & Disorder Implications:

- 5.5 None

Risk and Opportunity Management Implications:

- 5.6 The delay by Government in producing the Regulations to enable the Council to adopt a Code of Conduct which incorporates the necessary arrangements for disclosure of interests means that the Council has been unable to adopt a new Code by 1st July 2012. However, full Council will meet on 10th July 2012 to consider the approval of the new Code and Complaints procedure. In the time available, it has not been possible to arrange a Special Council Meeting prior to the 19th July meeting.

Public Health Implications:

- 5.7 None

Corporate / Citywide Implications:

- 5.8 None

SUPPORTING DOCUMENTATION

Appendices:

1. Draft Code of Conduct Brighton & Hove Council
2. Model Codes of Conduct from LGA and CLG
3. Draft Complaints Procedure Brighton & Hove Council

Documents in Members' Rooms

1. None

Background Documents

1. None

