

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 6 March and 1 May 2012. Attendances:

Councillor Jones (Chairman) (2)
Councillors Bennett (1), Birch (2), Elkin (1), Glazier (2) and Tutt (2)

1. Code of Conduct for Councillors and Local Standards Framework

1.1 The Localism Act 2011 abolishes much of the standards regime but requires councils to have a code of conduct and a register of members' interests. It also places a duty on councils to promote and maintain high standards of public life and have a mechanism in place to enforce the code. A register of members' interests is still required and failure to register or declare a pecuniary interest without a good cause has become a criminal offence to be enforced through the courts. Regulations are awaited which will confirm what constitutes a pecuniary interest. Councils will be able to require the inclusion of other pecuniary or non pecuniary interests. Any committee established to oversee the Council's code is not required to have independent members. Instead the Act requires the Council to appoint at least one independent person who must be consulted when an allegation is made that a member has breached the code of conduct.

1.2 The current Standards Committee met on 27 February 2012 to consider the proposals in relation to the new standards regime in East Sussex. The Governance Committee subsequently accepted their recommendations and approved the proposals set out below. In addition, the current Standards Committee and the Governance Committee have also considered the draft Codes of Conduct that had recently been produced by the Local Government Association and CLG. The Committees were of the view that these Codes were much looser in style, and the Committee had concerns regarding the extent to which their content would be open to interpretation, making it difficult to enforce, and creating a degree of uncertainty with members, and those they deal with, about what behaviour is acceptable.

Standards Committee

1.3 The proposed standards committee will be a formal committee of the Council and the composition will therefore be governed by proportionality. The Act establishes a new category of independent person who must be consulted at various stages. The current independent members' terms of office will therefore end from the day before (30 June 2012) the new provisions come into force (1 July 2012). In view of the requirement for the Council to have a code of conduct and to enforce it, a Standards Committee appears to be the most appropriate mechanism. It is therefore proposed that a Standards Committee be established comprising 7 Members. The proposed terms of reference of the Standards Committee are attached as Appendix 5. In order to provide flexibility in relation to the appointment of members to serve on Sub Committees of the Standards Committee it is proposed that the County Council be recommended to agree (with no member voting against) that the political balance provisions of the Local Government and Housing Act 1989 be waived in relation to the membership of Sub-Committees of the Standards Committee.

Code of Conduct

1.4 The Council is required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in their official capacity. The new Code must

GOVERNANCE

be consistent with the following seven principles - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Regulations to be made under the Act will require the registration and disclosure of 'Disclosable Pecuniary Interests' (DPIs). Once the Regulations are made Members will be informed as to what constitutes a DPI. The provisions of the Act also require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests. The Act prohibits members with a DPI from participating in the authority's business (unless they have obtained a dispensation) and it is recommended that the Council adopt a Standing Order requiring members to withdraw from the meeting room. The proposed Code attached as Appendix 1 has been discussed with the local borough and district councils in order to maintain a level of consistency across the geographical area, particularly in relation to twin-hatted members. There are however, some minor differences between the Codes being proposed. For example, in paragraph 8(4)(a) some authorities are referring to 'close friend', others are referring to 'a close associate' and the Code being proposed to the County Council refers to 'close friend or a close associate'. The proposed Code is, where possible, based on the current Code which is familiar to Members.

1.5 The main changes are:

- to include a section relating to DPIs. The regulations defining what constitutes a DPI have not yet been made, and the draft code may need to be amended once these are made.
- to no longer require twin-hatted members to leave the room where a matter is considered which relates to another public body of which they are a member.
- that members of the Executive have only a personal, rather than a prejudicial interest at a scrutiny committee where business is considered which relates to a decision that they or members of the Executive have taken.

Independent Persons

1.6 The arrangements adopted by the Council must include provision for the appointment of at least one Independent Person (IP). The functions of the IP are:

- they must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member
- they may be consulted by the authority in respect of a standards complaint at any other stage: and
- they may be consulted by a member of the authority against whom an allegation has been made.

1.7 It is important that the impartiality of the IP is not compromised by undertaking more than one of these roles where it would be inappropriate to do so. It would therefore seem appropriate to appoint more than one IP. It is proposed that authority be delegated to the Assistant Director, Legal and Democratic Services to appoint the Independent Persons.

Register of Interests

1.8 The Monitoring Officer will be required to maintain a register of interests which must be available for public inspection. The register must include DPIs (to be defined by regulations) but the Act also provides that an authority's Code must require the registration of non DPIs and non pecuniary interests (definition awaited). The Act provides that DPIs cover the interest of the member, but also the interests of their spouse/partner. Each elected or co-opted member must register all DPIs within 28 days of becoming a member. It is proposed that this register is in addition to the current

GOVERNANCE

register of interests. Once the Regulations defining DPIs are made, Members will be informed.

Dispensations

1.9 Under the new regime a dispensation may be granted where:

- so many members of the decision making body have DPIs in a matter that it impend the transaction of the business (meeting would be inquorate)
- without the dispensation the representation of the political groups would disturb the political composition of the meeting and so affect the outcome of the vote
- it would be in the interests of persons living in the authority's area
- every member of the authority's Cabinet is otherwise precluded from participating
- that the authority considers that it is otherwise appropriate to grant a dispensation.

It is proposed that the power to grant a dispensation be delegated to the Standards Committee, its Sub Committees and the Monitoring Officer.

Dealing with Complaints

1.10 The Act requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct. The draft Local Assessment of Complaints about Member Conduct is set out in Appendix 2. This sets out the Framework and is substantially the same as the current document. The main difference is the proposed removal of the Review stage from the initial assessment process, which is considered unnecessary.

Sanctions

1.11 The Act sets out various criminal offences, such as participating in a meeting or taking a decision where the member has a disclosable pecuniary interest without reasonable excuse. However, the Act does not give the Council or its Standards Committee any powers to suspend a member, so where failure to comply with the Code is found the range of actions could include: a formal letter being sent to the councillor concerned, reporting the committee's findings to the Council for information, recommending formal censure through a motion at full Council, a recommendation that the member is removed from committees or other positions appointed to or nominated to by the Council or its Executive or issuing a press release. The Standards Committee could also recommend other sanctions but these would require the member to agree to perform these, such as the member submitting a written apology in a form specified by the Standards Committee; the member undertaking such training as the Standards Committee specifies; the member participates in such conciliation as the Standards Committee specifies

Appendices 1 to 7 have been circulated separately to all members.

1.12 The Committee **recommends** the County Council to

(1) (a) approve and adopt (subject to 1(b)) the revised Code of Conduct to take effect from 1 July 2012 as set out in Appendix 1;

(b) delegate authority to the Assistant Director, Legal and Democratic Services to make amendments to the Code following publication of related Regulations;

GOVERNANCE

- (2) approve and adopt the arrangements for dealing with misconduct complaints (with effect from 1 July 2012) consisting of the draft local assessment of complaints about Member Conduct (Appendix 2), assessment criteria (Appendix 3), Monitoring Officer Protocol (Appendix 4) and terms of reference set out at Appendix (5), (6) and (7);
- (3) agree to the establishment of a Standards Committee comprising of 7 elected Members to be appointed on a proportionate basis, with the terms of reference set out in Appendix 5;
- (4) agree (with no Member voting against) to waive the political balance provisions of the Local Government and Housing Act 1989 in relation to the membership of Sub-Committees of the Standards Committee, whilst seeking, as far as is possible, to ensure that Sub-Committees are comprised of Members from more than one group;
- (5) agree to delegate to the Standards Committee, authority to discharge the duty of the County Council to promote and maintain high standards of conduct;
- (6) agree that the Constitution be amended to include provision that a member must withdraw from the meeting room (including the public gallery) during the consideration of any item of business in which they have a prejudicial or Disclosable Pecuniary Interest unless they are permitted to remain as a result of a dispensation or unless not required to withdraw by the Code of Conduct;
- (7) agree to delegate the power to grant dispensations to the Standards Committee, any Sub Committee of the Standards Committee and the Monitoring Officer;
- (8) agree that the power to grant officers exemptions from restriction of political activity (under Section 3A of the Local Government and Housing Act 1989) be delegated to the Chief Executive, in consultation with the Assistant Director, Legal and Democratic Services
- (9) agree to delegate authority to the Assistant Director, Legal and Democratic Services to appoint Independent Persons and to determine the rules and procedures for investigations and hearings by the full Standards Committee or any sub-committee of the Standards Committee;
- (10) agree that the Chief Executive be delegated authority to set the allowance and expenses for the Independent Persons;
- (11) agree that the Assistant Director, Legal and Democratic Services be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- (12) agree that the Assistant Director, Legal and Democratic Services prepare and maintain a register of interests to comply with the Council's Code of Conduct, once adopted, and the requirements of the Localism Act 2011;
- (13) agree to delegate to the Standards Committee, its Sub Committees and the Monitoring Officer such powers as necessary to perform the functions and exercise the discretions set out in the report and its appendices; and
- (14) agree that the threshold at which gifts or hospitality must be declared be increased from £25 to £50.