

# Cheltenham Borough Council

Council – 25<sup>th</sup> June 2012

## Localism Act 2011

### Report of the Constitution Working Group -

### New Conduct Regime

<b>Accountable member</b>	<b>Cabinet Member, Corporate Services, Councillor Jon Walklett</b>
<b>Accountable officer</b>	<b>Borough Solicitor, Sara Freckleton</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>This report sets out for Members' consideration, proposed arrangements for adoption by the Council in order to comply with the new conduct regime set out in the Localism Act 2011 and the recently approved Regulations. The Council is being asked to</p> <ul style="list-style-type: none"><li>• approve a Code of Conduct (in the form set out in the draft at Appendix 2 to this report) with effect from the 1<sup>st</sup> July 2012,</li><li>• determine the matters to be included in the Council's Register of Interests;</li><li>• put in place arrangements for the investigation and determination of allegations that any Member or Co-opted Member (including Parish Councillors within the Borough's area) has failed to comply with their Code of Conduct; and</li><li>• appoint Independent Person(s)</li></ul>
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. <b>That the draft Code of Members' Conduct, attached at Appendix 2, be APPROVED and ADOPTED with effect from 1<sup>st</sup> July 2012.</b></li><li>2. <b>That the Cheltenham Borough Council Register of Interests comprises those Disclosable Pecuniary Interests and other interests as set out in Appendices A and B of the Code of Members' Conduct at Appendix 2.</b></li><li>3. <b>That the Council's Constitution be amended to include within the Council, Cabinet Committee and Sub-Committee Rules of Procedure the following:</b>  <b>'A Member must withdraw from a meeting (including from the public area/gallery) during the whole of the consideration of any item of business in which the Member has a Disclosable Pecuniary Interest, or in which the Member has an "other" interest where, as a consequence of Paragraph 10(4) of the Council's Code of Conduct, the Member is required to leave the meeting and not participate or vote on the matter, unless the</b></li></ol>

**Member is permitted to remain through the granting of a dispensation.'**

- 4. That the arrangements for dealing with complaints, as set out in Paragraph 3 of this report are ADOPTED, together with the flowchart and assessment criteria set out at Appendix 3.**
- 5. To establish a Standards Committee, including a Hearings Sub-Committee, as set out in Paragraphs 3.13-3.17 of this report, together with the Terms of Reference set out at Appendix 4 to be incorporated within Part 3C of the Council's Constitution.**
- 6. That the Council determines the Membership of the Standards Committee in accordance with the political balance requirements (4:2:1).**
- 7. To ask the Independent Remuneration Panel to review the Council's Scheme of Allowances consequent upon the changes to the Standards Committee.**
- 8. That the Independent Person(s) be appointed in accordance with the recommendation of the Interview Panel.**
- 9. That Part 3D (Responsibilities for Functions – Officer Non-Executive Functions) of the Council's Constitution be amended to appoint the Borough Solicitor and Monitoring Officer to be the Proper Officer to receive complaints in writing regarding allegations of failure to comply with the Code of Conduct and that authority is delegated to the Monitoring Officer as follows:**
  - i) to determine, after consultation with the Independent Person(s), whether a complaint should be investigated and to arrange such investigation;**
  - ii) to seek local resolution of complaints without formal investigation where it is possible to do so;**
  - iii) to close a complaint if the investigation finds no evidence of failure to comply with the Code of Conduct;**
  - iv) to agree a local resolution where an investigation finds evidence of a failure to comply with the Code of Conduct, subject to consultation with the Independent Person(s) and the complainant being satisfied with the proposed resolution;**
  - v) to grant dispensations in accordance with Paragraphs 2.10 and 2.11 of this report;**
  - vi) to make any other minor consequential changes to the Council's Constitution as the result of the adoption of the arrangements set out in this report.**

<b>Financial implications</b>	<p>There is no specific budgetary provision for the payment of Special Responsibility Allowances to members of the Standards Committee, should an allowance be recommended by the Independent Remuneration Panel. It is considered that any such payments would be absorbed within existing budgets.</p> <p><b>Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264160</b></p>
<b>Legal implications</b>	<p>As set out in the report.</p> <p><b>Contact officer: Sara Freckleton, sara.freckleton@teWKesbury.gov.uk, 01684 272011</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>Resource will be required to ensure all members are briefed on the revised code.</p> <p><b>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355</b></p>
<b>Key risks</b>	<p>As set out in the Risk Assessment at Appendix 1</p>

## **1. Background**

- 1.1** The Council has previously been advised of the significant changes to the Conduct Regime contained in the Localism Act 2011. In summary, the regulatory framework governing Councillors' conduct is being replaced and from the 1st July 2012 the Council will need to have new arrangements in place to meet its statutory obligation, under the Localism Act, to promote and maintain high standards of conduct by Elected and Co-opted Members of the Authority. Standards for England (formerly the Standards Board) ceased to exist from the 1st April 2012, there will no longer be a legal requirement to maintain a Standards Committee and the mandatory Code of Conduct and statutory process for determining conduct complaints have also been removed. The Regulations which were required to provide the necessary detail and to implement the Localism Act were delayed and were only laid before Parliament on 8th June 2012. Notwithstanding that delay, the Regulations have confirmed implementation to be on or after 1st July 2012 and therefore the Council should now determine how it will implement the new regime.
- 1.2** The matters which need to be determined, for implementation on the 1st July 2012, are in summary:-
- Adoption of a Code of Conduct (Section 28).
  - Determination of the matters to be included in the Council's Register of Member Interests. (Section 29).
  - Putting in place arrangements for the investigation and determination of allegations that any Member or Co-opted Member (including Parish Councillors within the Borough's area) has failed to comply with the Code of Conduct (Section 28).
  - Appointment of Independent Person(s) (Section 28)
- 1.3** In order to assist the Council in making its decisions, the Constitution Working Group has met and considered the new requirements and has explored the various options which are available to meet the statutory requirements in the context of the needs of the Borough Council. Mindful also of the continuing obligation which is placed upon the Council to make arrangements to investigate and determine allegations of breach of the Code of Conduct by Parish Councillors within the Council's administrative area.
- 1.4** The following sections of the report provide further detail as to the reasoning behind the Constitution Working Group's recommendations and, where appropriate, sets out alternatives which were considered but not recommended.
- 1.5** As the provisions are new and will be subject to local variation throughout the Country, it is

recognised that there may need to be changes to all or any of the matters which are being determined at this meeting and that it is only through experience of using the new arrangements that their suitability can be assessed, monitored and, if necessary, reviewed. In determining its arrangements, the Council will retain flexibility to make amendments at a later date when experiences locally and further afield may inform practices and procedures. Nevertheless, the arrangements which are being suggested are intended to be comprehensive, transparent and sustainable to enable the statutory duty to be fulfilled by the Authority.

## **2. NEW CODE OF CONDUCT AND REGISTER OF INTERESTS**

- 2.1** The Council has a statutory duty to adopt a Code of Conduct dealing with the conduct which is expected of Members and Co-opted Members of the Authority and which is consistent with the 7 principles of public life; selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Council has discretion to devise its own Code of Conduct either by adapting the current Code or by adopting a new one. Various organisations, including Communities and Local Government (CLG), the Local Government Association (LGA) and the Association of Local Authority Secretaries and Solicitors (ACSeS) have produced versions of a new Code of Conduct devised to meet the requirements of the Act and there are some examples of Codes already adopted by various Local Authorities, some on a County-wide basis and others on an individual basis. Whilst all of these no doubt meet the statutory requirements, they differ considerably in content and format, some based on those produced by the organisations referred to above and others adapted from the current Code of Conduct. A model Code of Conduct has also now been produced for Parish Councils by the National Association of Local Councils (NALC), although the Local Association prefers to seek a Gloucestershire-wide Code for Parish and Town Councils if this is possible.
- 2.2** As may be expected, in the absence of a prescribed model, or mandatory Code, the versions which have been produced vary considerably, some being at a high level and widely drawn and others being adaptations of the current Code of Conduct. The versions which are at high level and widely drawn may lead to varying interpretations as well as lack of clarity for Members and for the public. Members of the Constitution Working Group considered that the wording should be clear, comprehensive and straightforward so that all concerned are aware of the requirements. It was also considered important for definitions to be included within the Code to ensure clarity.
- 2.3** The Working Group was also mindful of the statutory requirement for Parish Councils to adopt their own Code of Conduct and for the Borough Council to make arrangements to investigate and determine complaints about the conduct of Parish Councillors. In those circumstances, it is desirable for purposes of consistency and efficiency, that the Borough Council and Parish

Councils Codes of Conduct are drawn in as similar terms as is possible. Consideration has been given by Monitoring Officers within Gloucestershire as to the desirability of having a consistent Code of Conduct for all Gloucestershire Authorities (County, District and Parish levels), and although some work has begun, the delay in the issue of the Regulations and the need for Authorities to meet their individual Council deadlines, mean that this work has not been concluded ahead of the July implementation date. Nevertheless, in recommending the Code at Appendix 2, the Working Group recommends that the Council continues to participate, through the Monitoring Officer, in discussions with the other Gloucestershire Authorities which is likely to conclude in the Autumn. The Council can then consider whether it wishes to revisit its Code of Conduct when the joint work has been completed.

- 2.4** It is recommended that the draft Code of Conduct which is attached at Appendix 2 be adopted by the Council to take effect from the 1st July 2012. This Code is also, with some fairly minor amendment, suitable for Parish Councils and therefore can be recommended for adoption by the 5 Parish Councils within the area. The Appendices A & B to the Code contain the matters which it is recommended be included within the Council's Register of Interests for the purpose of Section 29 of the Act and which is discussed further below

### **Register of Interests**

- 2.5** The statutory position is that the Council must determine what is to be entered into the Authority's Register of Interests of Members and Co-opted Members of the Authority and the Monitoring Officer must establish and maintain the Register. The Register must include those matters which have been prescribed in the recently issued Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as well as any other interests as determined by the Authority. The requirements of the Regulations are set out in Appendix A to the Code of Conduct and the other interests which are recommended to the Council for inclusion in the Register are set out in Appendix B. The Monitoring Officer will, in order to fulfill the statutory obligation to establish and maintain a Register of Interests for the Authority (and Parish Councils), devise a form for use by Members to notify their interests. The form will be circulated for completion by Members as required by the Code of Conduct.
- 2.6** Members' attention is specifically drawn to the requirements within Appendix A which include disclosure requirements not only of the Member but also those of their spouse, civil partner, or person living with the Member as spouse or civil partner.
- 2.7** The Register of Interests must be published on the Council's website together with the Register of Interests of the Parish Councils within its area. A copy also has to be made available for public inspection.

## **Disclosure of Interests and Restriction on Participation**

- 2.8** The Localism Act prohibits Members with a Disclosable Pecuniary Interest (Code Appendix A) from participating in any item of business relating to that interest. The Act does not require withdrawal from the meeting but, as this is the current requirement and ensures transparency, it is recommended that this practice continues and the Code of Conduct is drawn accordingly. In order to make this a procedural requirement, the Council is being recommended to make an amendment to its Council, Cabinet and Committee Rules of Procedure which will require a Member who has an interest (both Disclosable Pecuniary Interests, or where paragraph 10(4) of the Code applies) to leave the room in which the meeting is taking place during the discussion and decision on the matter in which the Member has the interest (unless having a dispensation or, where appropriate, making a submission in the manner available to a member of the public).
- 2.9** It is a criminal offence to fail to disclose interests which are contained in Appendix A to the Code of Conduct (Appendix 2).

### **Dispensations**

- 2.10** The Localism Act provides a discretion for the Council, upon a written request to the Proper Officer, to grant a dispensation relieving the Member or Co-opted Member of the Authority from the restrictions set out in 2.8 above. The dispensation may be given (for a period of up to 4 years) if, after considering all of the circumstances of the case, the Authority considers:-
- (a) that the business will be impeded because of the number of Members prohibited from participating;
  - (b) that without the dispensation the political proportionality would be distorted to alter the outcome of the vote;
  - (c) that granting the dispensation is in the interests of persons living in the Authority's area;
  - (d) that without dispensation each Member of the Executive (Cabinet) would be prohibited from participating in the business to be transacted at the Executive (Cabinet);
  - (e) that it is otherwise appropriate to grant the dispensation.
- 2.11** As the circumstances referred to in (a) and (b) above are relatively straightforwardly assessed, it is recommended that granting dispensations in those circumstances may be delegated to the Monitoring Officer with any other applications, together with any referred by the Monitoring

Officer, to be determined by the Standards Committee. This will enable those dispensations which can be dealt with by the Monitoring Officer to be dealt with in a shorter timescale than the rather longer route of Committee consideration.

### **3. Arrangements for Investigation and Determination of Allegations of Misconduct**

- 3.1** The Act requires that the Council adopt “arrangements” for dealing with complaints of breaches of the Code of Conduct both by Borough Council Members and by Parish Council Members within the Borough. The “arrangements” should set out, in some detail, 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 relevant Code of Conduct.
- 3.2** The Act repeals the requirements for separate Assessment & Review Sub-Committees and enables the Council to establish its own process which can include delegation of decisions on complaints. As the statutory provisions no longer give a Standards Committee or Monitoring Officer powers to deal with complaints, the Council must determine the delegation of authority to the Monitoring Officer and to any Committee either existing or to be established.
- 3.3** The Constitution Working Group considered the principles which should underpin the arrangements to be put in place by the Council from which the following emerged.;
1. the arrangements should be streamlined with decisions, where appropriate, delegated to the Monitoring Officer in consultation with the Independent Person(s);
  2. the emphasis should be on local resolution rather than formal investigation;
  3. emphasis should be placed upon identifying and resolving any underlying issues which may escalate to complaints;
  4. criteria should be developed for cases which warrant investigation and which should rule out ‘trivial’ complaints, “tit for tat” complaints and, in most circumstances, anonymous complaints where pursuit would not be in the public interest.
- 3.4** The Standards for England guidance on initial assessment of complaints has provided a reasonably robust basis for filtering complaints and, in accordance with the above principles and the flexibility allowed within the Act, it is proposed that the initial decision on whether a complaint requires investigation be delegated to the Monitoring Officer in consultation with the Independent Person(s). However should the Monitoring Officer feel it inappropriate to take such a decision, for example where the Monitoring Officer has previously advised the Member on the matter, or where the complaint is particularly sensitive, the option for the matter to be referred to a Committee



would be available. Such arrangements would offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally before taking a decision on whether the complaint merits formal investigation. In order to ensure accountability, the Monitoring Officer would be required to report to the Committee on the number and nature of complaints received and action taken.

- 3.5** Where a formal investigation finds that the circumstances do not amount to a failure to comply with the Code of Conduct, the current requirement is that this is reported to the Standards Committee and the Standards Committee takes the decision to take no further action. It would be proposed to delegate this decision to the Monitoring Officer in consultation with the Independent Person(s). A summary report of each such investigation will be presented to the appropriate Committee for information.
- 3.6** Where a formal investigation finds evidence of failure to comply with the Code of Conduct there could still be an opportunity for local resolution avoiding the necessity of a hearing. Sometimes the investigation report can cause a Member to recognise that his/her conduct was capable of amounting to a breach and it might be appropriate to identify some remedial action which is acceptable to the complainant. The complainant may be satisfied by recognition of fault and an apology or other remedial action. Therefore authority could be delegated to the Monitoring Officer to agree a local resolution after consultation with the Independent Person(s) and where the complainant is satisfied with the outcome. A summary report would be submitted to the appropriate Committee.
- 3.7** In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for a hearing to be held at which the Member against whom the complaint has been made can respond to the investigation report and it can be determined whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.
- 3.8** An assessment criteria for complaints and a flow chart of the complaint procedure is attached at Appendix 3 to support the above process.
- 3.9** The Act does not give the Council any powers to impose sanctions such as suspension. Therefore, where a failure to comply with the Code of Conduct is found, the range of actions which the Authority can take in respect of the Member is limited.
- 3.10** Appropriate sanctions which may be imposed in relation to Members or Co-opted Members of the Borough Council include:-
- Censure.
  - Reporting findings to the Council.

- Recommending to the Leader of the Council that a Member be removed from the Cabinet or from particular portfolio responsibilities.
- Recommending to the Member's Group Leader that the Member be removed from a Committee.
- Removing the Member from an Outside Body appointment.
- Withdrawing facilities provided to the Member by the Council.
- Excluding the Member from all or part of the premises of the Council (with the exception of the meeting rooms).
- Arranging suitable training for the Member.

**3.11** In respect of Parish Councillors the following may be appropriate:-

- Censure.
- Reporting the findings to the Parish Council.
- Recommending that the Parish Council.
  - Remove the Member from any Outside bodies to which they have been appointed;
  - Withdraw facilities provided by the Council to the Member;
  - Exclude the Member from the Council premises (except meeting rooms);
  - Arranges training for the Member.

**3.12** There is no requirement to put in place any appeals mechanism against such decisions. The decision must comply with the normal requirements of decision making (including the imposition of sanctions) must be taken properly and reasonably and can be challenged in the High Court by way of Judicial Review proceedings.

### **Standards Committee**

**3.13** The Localism Act repeals Section 55 of the Local Government Act 2000 which provides for the current statutory Standards Committee. Whilst there is no requirement for a Standards Committee within the new arrangements, there is still a need for the Council to comply with its

statutory duty to promote and maintain high standards of conduct and to demonstrate publicly and transparently that this is the case.

**3.14** The Constitution Working Group considered the advantages and disadvantages of the following alternative options and Members were of the view that a Standards Committee would best serve the interests of the Borough:-

1. To maintain a Standards Committee.
2. To include the new requirements within the Terms of Reference of an existing Committee e.g. Audit Committee.
3. Delegation of the whole process to the Monitoring Officer.

**3.15** The Working Group was of the view that, although there is some synergy between the Audit Committee and matters of ethical behaviour in that the Audit Committee's remit includes corporate governance, there is a danger of focus being taken away from conduct matters and diluted by the range and complexity of the Audit Committee's workload. Furthermore, the conduct of Hearings into possible breaches of the Code of Conduct is a quasi-judicial matter and is not a role which is necessarily within the experience of the Audit Committee or its Members.

**3.16** Delegating the entire responsibility for determining complaints to the Monitoring Officer was similarly ruled out by the Working Group. Although it was recognised that, delegating some of the early stages of complaint assessment and resolution to the Monitoring Officer, in consultation where necessary and appropriate with the Independent Person(s) would be beneficial, it was considered that to completely exclude the input of elected Members from this process would not provide sufficient ownership, public profile or transparency. It was considered that a combination of delegating some responsibilities to the Monitoring Officer and setting up a Standards Committee to deal with more complex or serious cases, achieves the right balance between efficiency and Member accountability and leadership.

**3.17** A Standards Committee under the new regime must comprise Borough Councillors and be politically proportionate. Any Co-opted Members cannot be voting Members of the Committee and therefore would be observers/advisers only. Unlike the current position where only 1 Executive (Cabinet) Member can sit on a Standards Committee, there is no statutory restriction on Membership. It is suggested that Membership of the Committee should comprise 7 Borough Councillors and that the Independent Person(s) appointed by the Council, pursuant to the requirements of Section 28 of the Act, be Co-opted non-voting Members of the Committee. The Working Group did consider whether or not there should be any Parish Councillors co-opted onto the Standards Committee as non-voting Members, but, in recognition of the fact that the Borough

does not have complete Parish Council representation, were of the view that Parish Council representatives should not be invited at this stage. The Council should consider whether it wishes to impose any restriction on Membership eg: limitation on number of Cabinet Members. Proposed Terms of Reference are attached at Appendix 4 which include a Hearings Sub-Committee comprising 3 Members drawn from the Standards Committee to hear cases where there has been an investigation, concluding in a finding of a 'breach' of the Code of Conduct.

#### **4. Appointment of Independent Person(s)**

- 4.1 At its meeting on the 14th May 2012, the Council approved a process to seek applications for appointment up to 3 Independent Persons, under the provisions of the Localism Act.
- 4.2 By way of reminder, the statutory role of the Independent Person(s) is that their views must be sought and taken into account by the Authority before it makes a decision on an allegation that it has decided to investigate. Their views may also be sought by the Authority on other related matters or by a Member or Co-opted Member of the Authority or Parish Council whose behaviour is the subject of an allegation.
- 4.3 The Independent Person(s) cannot, within the past 5 years, have been a Member or Co-opted Member of the Borough Council, or any of the Parish Councils within its area, and cannot be a relative or close friend of such Members. The recently issued Regulations included a provision to enable Independent Co-opted Members of the Council's Standards Committee to apply to be an Independent Person provided that they are not a Member of the Council's Standards Committee on the 1st July 2012 and that they are appointed before 1st July 2013.
- 4.4 The advertisement for the role of Independent Person was published on the Council's website from the 21st May to 13th June and applications were invited from any persons who considered that they could fulfill the role.
- 4.5 Applicants for the position are being interviewed by a Panel of Members (Group Leaders or their nominated representatives) on the 20th June 2012 who will make a recommendation to the Council. The details will be circulated as soon as they are available.

#### **5. Consequential Amendments to the Constitution**

- 5.1 Within this report there are a number of recommendations for amendment to the Council's Constitution in particular to Part 3 – Responsibility for functions from which reference to the Statutory Standards Committee will be deleted and the new Standards Committee Terms of Reference inserted. There may be some consequential changes to other parts of the Constitution arising from the Council decisions. Authority is therefore sought for the Borough Solicitor to make any consequential changes to the Constitution which arise as a result of decisions taken on this report.

## 6. Reasons for Recommendations

6.1 To enable the Council to comply with the requirements of the Localism Act 2011.

## 7. Alternative Options Considered

7.1 These are discussed within the report.

## 8. Consultation and Feedback

8.1 Consultation has taken place with the Standards Committee, the Constitution Working Group and with Parish Council representatives.

## 9. Performance Management –Monitoring and Review

9.1 The new regime is intended to be monitored by the Council's Standards Committee and should the arrangements require review, a report will be brought to the Council.

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<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Code of Conduct including Appendix A and B</li><li>3. Complaints Flowchart &amp; Assessment Criteria</li><li>4. Standards Committee Terms of Reference</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. Localism Act 2011</li><li>2. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012</li><li>3. The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Order) Order 2012</li><li>4. Chairman of Standards Committee Annual Report to Council on the 26<sup>th</sup> March 2012</li><li>5. Report to and Minutes of Council re Appointment of Independent Persons under the Localism Act 2011 – New Standards Regime on 14<sup>th</sup> May 2012</li></ol>

# Risk Assessment

# Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Council does not agree revised arrangements, the Council will not comply with the requirements of the Localism Act 2011.	Borough Solicitor	25/06/12	5	2	10	Reduce	Consider and respond to report.	01/07/12	Borough Solicitor	