

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 28th May 2012

Report Title: Code of Conduct and Revised Standards Arrangements - Localism Act 2011

Report By: Jane Hartnell
Head of Corporate Services

Purpose of Report

To update Members on the steps required to comply with the Localism Act 2011, and to seek Members views on the draft Code of Conduct and revised Standards Arrangements set out in Appendix 1, 2, and 3 of the report.

Recommendation(s)

1. That Standards Committee recommends to Cabinet, that the Council be recommended to:
2. Adopt the Code of Conduct as set out in Appendix 1 to take effect from 1st July 2012.
3. Delegate authority to the Monitoring Officer in consultation with the Chair of the Standards Committee and the Chief Legal Officer, to make any necessary changes to the Hearings (Appendix 2) and Investigations procedures (Appendix 3) in order to comply with the regulations when published.
4. Appoint a local Standards Committee to consist of five members of Hastings Borough Council.
5. The Monitoring Officer be delegated authority to proceed with the appointment of Individual Persons in accordance with the yet to be published regulations

Reasons for Recommendations

The Council is required to agree and put in place its arrangements for standards and Members Code of Conduct by 1st July 2012.

Introduction

Background

1. The Localism Act 2011 repeals Section 55 of the Local Government Act 2000 which provides for the current statutory framework for Standard Committees which promotes and maintains high standards of conduct by councillors.
2. The Council is however required to establish its own arrangements which need to be in place by 1st July 2012.

Standards Committee

3. The Localism Act requires the Council to have a committee to deal with standards issues, i.e. to hear complaints against Members of the Council. However the Council has a choice as to whether it wishes to maintain a separate Standards Committee or whether the functions should be delegated to an existing Committee.
4. Any voluntary Standards Committee or Sub-Committee would be an ordinary committee established under s101 and s102 of the Local Government Act 1972, and as such would be subject to the normal proportionality rules.
5. For the purposes of this report, it has been presumed that Members will wish to maintain a separate Standards Committee, and the subsequent draft Code, protocols and procedures have been developed in the light of this presumption.
6. The Localism Act also establishes a new category of Independent Persons who must be consulted at various stages of the complaints process. Unfortunately, the legislation appears to prevent the current independent members from serving as Independent Persons for a period of five years. This issue is addressed later in paragraph 25. However, it is understood that the current co-opted Members' terms of office will need to come to an end as from the date the new provisions come into force (1 July 2012).

Code of Conduct

7. The Localism Act has repealed the '10 General Principles of Conduct' and the current model Code of Conduct. However, the Council is required to adopt a Code of Conduct (the Code) which should be consistent with the 7 Nolan principles in public life, namely:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

8. The Code only applies to Members when they are acting in their official capacity and the Act states that Members will no longer have to give an undertaking to comply with the Code, unless required to do so by standing orders. The effect of signing the Hastings Borough Council Code as drafted however would mean that Members will be giving this undertaking.
9. Appendix 1 sets out a draft Code for Members consideration. This draft Code has been developed collectively by Solicitors and Monitoring Officers in East Sussex councils; it incorporates best practice and elements of the Local Government Association's template draft Code. It is proposed that each district and borough adopt the draft Code to give consistency within the local area.
10. Much of the current code has been retained. This will have the benefit of being familiar to Members, will reduce the need for training, and has thus far delivered consistently high standards of conduct at Hastings.
11. It is recognised however, that there are concerns about the current Code, particularly around the ability of Members to speak when a prejudicial interest arises out of their membership of an outside body. The new draft Code therefore includes the ability for Members to speak, but not vote in such situations in the future.
12. Regulations yet to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), which it is believed will be similar to the current prejudicial interest. 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 draft Code provides for this at Paragraph 8.
13. The Act also prohibits Members with a DPI from participating in authority business. However Council will be advised to continue to comply with the current constitution which requires Members to withdraw from the meeting room, as this will ensure the integrity of decisions.
14. The Council's new Code of Conduct is required to deal with:
 - General Conduct rules to give effect to the seven principles. This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct.
 - Registration and disclosure of interests other than DPIs effectively replacing the current personal interest provisions. However until we know what will constitute a DPI it is difficult to know what additional disclosure would be appropriate.
15. Members are therefore reminded that the draft Code in Appendix A, is not YET the complete version of the Code for the reasons mentioned above.

Dealing with Misconduct Complaints

16. The Act requires that the Council adopt "arrangements" for dealing with complaints of breach of the Code of Conduct. The Act repeals the requirements for separate referrals, reviews and hearing sub-committees and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed as the statutory provisions no longer give the Standards Committee or the

Monitoring Officer special powers to deal with complaints, it is necessary for the Council to delegate appropriate powers to the Standards Committee and to the Monitoring Officer. A suggested arrangement for the Hearings Procedure is set out in Appendix 2.

Hearings Procedure

17. Members are advised to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether the complaint requires investigation, with the power to consult with the Independent Person if required and the ability to refer particular complaints to the Standards Committee if that is felt appropriate, for example where the complaint is sensitive and/or serious.
18. These arrangements will also 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. If this function is delegated to the Monitoring Officer, it is right that she should be accountable for its discharge for this purpose. Members may also feel it is appropriate for the Monitoring Officer to make periodic reports to the Standards Committee which would enable her to report on the number and nature of complaints received, and draw to the Members attention areas where training or other action might avoid further complaints, and to keep the Committee advised of progress on investigations and costs.
19. Where a formal investigation finds no evidence of failure to comply with the Code the decision to take no further action should be left with the Monitoring Officer. Where formal investigation finds evidence of a failure to comply with the Code of Conduct it may still be appropriate for some local resolution to be sought. It may be appropriate in these circumstances for the Monitoring officer to consult with the Independent Person, and possibly the complainant.
20. In other cases where the formal investigation finds evidence of a failure to comply with the Code of Conduct it would be necessary for the Standards Committee to hold a hearing at which the Member against whom the complaint has been made can respond to the investigation report and the Committee can decide whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.
21. As with the Code of Conduct the East Sussex authorities are working together to develop a single process for dealing with complaints where an investigation is necessary. However until such time as that is circulated a suggested Investigations Procedure is to be found at Appendix 3, and Members will be advised to adopt this.

Sanctions

22. The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members. So, where 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 but might include:
 - A formal letter to the Member in question
 - Formal censure through a motion

- Recommendation to the Member's political group that they are removed from Committees; or
 - Issuing a press release which details the breach.
23. The Association of Councils Secretaries and Solicitors (ACSeS) have taken legal advice and the suggested sanction in the hearing procedure (Appendix 2) has been based on this advice. There is no requirement to put in place any appeals mechanism, though any decision would obviously be open to Judicial Review by the High Court if it was wrong in law or patently unreasonable.
24. It may be that the Monitoring officer would suggest mediation or training instead of referring the matter to Standards Committee as part of the discretionary stage.

Independent Persons

25. The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person. The Independent Person must be appointed through a process of public advertisements, applications and appointment by a positive vote of a majority of all members at Full Council. The person is not considered to be "independent" if:
- S/he is, or has been within the last five years, an elected or co-opted member or officer of the Borough Council.
 - S/he is or has been within the last five years, an elected or co-opted member of any Committee or Sub-Committee of the Borough Council. (which would preclude any of the current co-opted independent members of the Standards Committee from being appointed an Independent Person); or
 - S/he is a relative or close friend of a current elected or co-opted member or officer of Hastings Borough Council, or any elected or co-opted member of any Committee or Sub-Committee of Hastings Borough Council. There is a wide definition of "relative" which includes the candidate's spouse or civil partner and various others connected to him.
26. The functions of the Independent Person are:
- They must be consulted by the authority and their views taken into account before making a decision on whether the Member 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 Council against whom a complaint has been made.
27. The final point causes some problems as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might therefore be regarded as prejudiced on the matter, to be involved in the determination of that complaint.
28. There may therefore be benefits in appointing more than one Independent Person, and consideration should be given to whether this authority would wish to join with

the East Sussex authorities to recruit a panel of Independent Persons who would be available as necessary, this would offer a cost and efficiency advantage. However if members were minded not to go down this route, we have previously appointed 2 members and it is suggested we would wish to continue to do so.

29. It is understood that Ministers are minded to include in regulations some transitional provisions for authorities to appoint persons as independent persons who, although not chairs or members of standard committees at the time of appointment or thereafter, have held such posts within the last years. The regulations are expected to cover other requirements for appointing independent persons e.g. public advertisement, and so, until the regulations emerge, the Council can make no further significant progress in relation to making appointments.
30. Consideration will need to be given to whether an allowance or expenses will be paid to the Independent Person. These payments no longer come within the scheme of Members Allowances and can be determined without reference to the Independent Remuneration Panel. The role of the Independent Person is likely to be substantially different to the current Independent Members, i.e. they can be invited to attend the meetings of the Standards Committee but will not be a voting member and cannot chair the Committee as is currently the case. It is likely that they will need to attend all hearings and only give their views once all evidence and submissions have been made. A report will be brought forward to Council at a later date to determine this issue.

The Register of Members' Interests

31. The Monitoring Officer continues to be required to maintain a register of interests which must be available for inspection and available on the Council's website.
32. As previously mentioned the Act creates a power for the Secretary of State to publish regulations explaining what will be classified as pecuniary interests and disclosable pecuniary interests. It is anticipated that they will be similar to the current prejudicial interests.
33. Whilst the intention was to simplify the registration requirements, it does appear as though the Act extends the requirements for registration as it does expressly state that DPIs arise where they relate to not only the Member's own interest but also those of the Member's spouse or civil partner or someone living with the Member in a similar capacity.
34. The Act is also clear that each elected or co-opted Member must register all DPIs within 28 days of becoming a Member. Whilst there appears to be no continuing requirement for Members to keep the register up-to-date it is likely that Members will wish to register new interests from time to time as this avoids the need for disclosure at meetings.
35. The most significant change for Members in relation to the disclosure of interests is that it will become a criminal offence to fail to register an interest, fail to notify a meeting of a DPI where that interest is not already on the register, or to take 'steps or any further steps in relation to the matter' where a DPI arises.

36. Such offences are liable on summary conviction to a fine not exceeding level 5 (£5,000) and the court may also disqualify the Member for a period of up to 5 years for being a Member or co-opted Member of the Council or any other relevant authority.

Disclosure of Interests and Withdrawal from Meetings

37. If a Member has a DPI in any matter s/he must not participate in any discussion of the matter at the meeting or participate in any vote unless he has obtained a dispensation. Failure to comply with the requirements is a criminal offence. The Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, and failure to comply with these would be a breach of the Code of Conduct but not a criminal offence.
38. The requirement to withdraw from the meeting room can be covered by Standing Orders, as stated previously Council will be advised to continue to comply with the current constitution which requires Members to withdraw from the meeting room, including the public gallery at the appropriate time when they have a prejudicial interest or DPI, except where he/she is permitted to remain as a result of the grant of a dispensation. It is believed that this will continue to ensure the integrity of decisions made.

Sensitive Interests

39. The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests. So where a Member is concerned that disclosure of the detail of an interest at a meeting or on the register of members’ interests would lead to the member or a person connected with him/her being subject to violence or intimidation, s/he may request the Monitoring Officer to agree that the interest is a “sensitive interest”.
40. If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members’ interests.

Dispensations

41. In future a dispensation will be able to be granted in the following circumstances:
- That so many Members of the decision making body have DPIs in a matter that it would “impede the transaction of the business”;
 - That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of the vote on any matter;
 - That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - That without the dispensation, no member of the Cabinet would be able to participate on this matter; or

- That the authority considers that it is otherwise appropriate to grant a dispensation.

42. This power can be delegated to the Standards Committee or the Monitoring Officer.

Conclusion

43. The Localism Act provides us with the opportunity to simplify our processes relating to Standards. Whilst regulations providing us with more details are still awaited it is important that decisions in relation to the new regime are taken as soon as possible to enable the new processes to be in place by 1 July 2012.
44. The Standards Committee is invited to consider the contents of this report and the suggested recommendation.
45. Risk Assessment Statement - If the Council does not consider the implications of the Localism Act and put in place the required changes to the Standards Regime they would be failing to comply with legislation.

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St. Helens, Tressell, West St. Leonards, Wishing Tree

Area(s) Affected

Central Hastings, East Hastings, North St. Leonards, South St. Leonards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	Yes

Background Information

Appendix 1 - Draft Hastings Borough Council Code of Conduct for Members
 Appendix 2 - Draft Hearings Procedure
 Appendix 3 - Draft Investigations Procedure

Officer to Contact

Chris Barkshire-Jones

Chief Legal Officer
(01424) 451731
cbarkshire-jones@hastings.goc.uk
