

COUNCIL	AGENDA ITEM 14(i)
18 APRIL 2012	PUBLIC REPORT

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LOCALISM ACT 2011

R E C O M M E N D A T I O N S

(1) That the Monitoring Officer, in consultation with group leaders, is requested to:

- (a) develop the proposed Code of Conduct (annex A);
- (b) prepare a protocol for receipt, investigation and consideration of complaints against councillors;
- (c) prepare revised terms of reference for any committee dealing with complaints against members; and
- (d) consider and recommend whether an annual retention fee should be paid to the independent persons (providing comparative information from other councils).

subject to formal approval of these arrangements by Council prior to implementation of the new standards regime;

(2) That the Council supports the incorporation of the Council's ethical governance functions within the terms of the Audit Committee upon commencement of the new regime and following approval by Council;

(3) That the Monitoring Officer is given delegated powers to devise and implement a procedure for recruiting one or more "Independent Persons", subject to approval of such appointments by Council;

(4) That the Monitoring Officer is asked to take all necessary steps to establish a register of members' interests to replace the current register and to ensure that councillors are made aware of any changes to registration and declaration of interests.

1. A NEW STANDARDS REGIME

1.1 The Localism Act 2011 Act has established that:

- (1) That Standards for England, the regulatory body, is abolished
- (2) The Code of Conduct remains compulsory, although members will be free to decide upon some of its content
- (3) The Code is to include new provisions about pecuniary interests which will carry criminal penalties for failure to comply, although the information regarding what constitutes a 'disclosable pecuniary interest' is to be defined in Regulations not yet released
- (4) That there will be new arrangements for considering any breach of the Code of Conduct, such arrangements to be at the discretion of members
- (5) New independent persons are to be appointed in a different role.

- 1.2 The date for implementation of these changes is currently proposed as the 1st July 2012. This means that the existing provisions regarding the register of interests, code of conduct and standards committee continues in its present form until 30 June 2012.
- 1.3 Council should note that there are discussions at national level regarding the implementation date of the new arrangements and members will be advised accordingly of any changes to the proposed date.

2. THE CAMBRIDGESHIRE APPROACH

- 2.1 The Monitoring Officers and Deputy Monitoring Officers of the seven Cambridgeshire authorities have been meeting regularly to discuss the implementation of these changes. These officers are recommending to their respective authorities that a county wide approach is taken to the implementation of the new changes. It is believed that this shared service approach will provide a cost effective and efficient means of implementing the changes

3. CODE OF CONDUCT

- 3.1 A code of conduct will be mandatory but there is discretion about what the Code is to contain, so long as it gives effect to the Nolan principles (included in the draft Code at annex A). Various draft model codes of conduct are in preparation (by the LGA and ACSeS) but there has been no consistent approach to a single draft Code.
- 3.2 Given that there is now less than 3 months before the new regime is to begin, the officer group of the Cambridgeshire authorities have decided to propose a draft code for use within their various authorities based upon paragraphs 3 – 7 of the existing code of conduct (see annex A). Although members of this authority may wish to have an individual Code for Peterborough, there is merit in retaining a familiar Code for the first year of the new regime. This will allow time to develop and embed a new Code (through the Constitution Review Group) over the course of the coming year and it is on this basis that the draft Code has been proposed.
- 3.3 In addition to these provisions, the Code will contain a requirement to register 'disclosable pecuniary interests' (DPIs). These DPIs will be prescribed in regulations which have not been released at the date of this report and for which there is no fixed date for release.
- 3.4 Any members who wish to see the alternative Codes can request copies from the Deputy Monitoring Officer or refer to the links within the background documents.

4. REGISTER OF INTERESTS

- 4.1 The current provisions for registration of interests are to be replaced. It is not clear what this will mean in practice, as the detail will be contained in regulations not yet available.
- 4.2 The Monitoring Officer will be required to establish a register of members' interests. The register must contain 'disclosable pecuniary interests' (DPI's) and may also contain;
 - Non-disclosable pecuniary interests; and
 - Non-pecuniary interests.

Although reference is made to the full range of interests in the draft Code the final format of the Code will be determined and recommended to Council once the Regulation and/or any guidance is produced in relation to the DPI's.

- 4.3 Failure to register a disclosable pecuniary interest, failure to register within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse, will be criminal offences, potentially carrying a scale 5 fine (£5,000) and/or disqualification from being a councillor for up to five years. A decision whether to prosecute would be made by the Director of Public Prosecutions.

- 4.4 A member with a disclosable pecuniary interest may not participate in discussion about a matter to which the interest relates, and may not vote, but is not obliged to leave the meeting room. However, it may be considered good practice to leave and views will be sought on a preferred approach by the Monitoring Officer.

5. THE FUTURE OF THE COMMITTEE

- 5.1 As expected, there is no requirement in the Act for a Standards Committee. There remains, however, a requirement to have a process to deal with breaches of the Code of Conduct.
- 5.2 The Act does allow members to decide how complaints should be processed. At present any complaint made is referred to the standards committee. A widely recognised advantage of the Localism Act is that the new arrangements would allow the Monitoring Officer to filter complaints and only refer the more serious complaints on for investigation, with a committee sitting only to consider the outcome of any investigation. This would not only improve the speed by complaints are processed but would also allow greater scope for informal resolution.
- 5.3 Members have indicated mixed views as to whether this committee ought to be a separate committee or should form part of the audit committee. Given that this will be a simplified standards process, the requirement for the committee to meet to consider complaints should be significantly reduced and therefore it is recommended that this function is to be part of the remit of the audit committee but this will be a matter for members to decide.
- 5.4 Whatever its format, any such committee will be governed by political proportionality (i.e. the political membership will have to reflect the political make up of full Council), unless the Council votes otherwise (with no member voting against). The Chair of the committee will therefore be a member of the Council and not an independent member as under the current standards committee. The new role of the independent persons is yet to be finalised but it is clear that they will not be members of the Committee.
- 5.5 The Act does not give the Council or its Standards Committee any powers to impose sanctions for breach of the Code, such as suspension or requirements for training or an apology. So, 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. It may be open to the Council to remove a member from a committee, although this would require the co-operation of the political group to which the member belongs, as the Council is obliged to make committee appointments in accordance with the wishes of each political group.

6. INDEPENDENT PERSONS

- 6.1 The Council will be required to appoint one or more “Independent Persons”. This is not the same role as the independent members who chair the current standards committee.
- 6.2 The independent person has three main functions:
- The IP must be consulted and their views taken into account before the Council makes a decision on any allegation it has decided to investigate (i.e. at hearing stage).
 - The IP may be consulted by the Council in other circumstances related to “standards” issues; e.g. at the point at which a complaint is received, or more generally regarding ethical issues.
 - The IP may be consulted by a member of the authority against whom an allegation has been made.
- 6.3 This last role could give rise to a conflict of interest if, for instance, the Monitoring Officer has already consulted, or needs to consult, the independent person. It is considered prudent therefore to appoint more than one independent person.

- 6.4 The independent persons will not be paid a members allowance. Early indications are that most councils will be paying an annual retention fee. Although some members of this Council have suggested that no fee ought to be paid to the independent persons, it is considered that this will be less likely to attract anyone to the role and will be inconsistent with the approach taken by other Councils both within Cambridgeshire and nationally.
- 6.5 The Act was written to exclude existing independent members of the standards committee being appointed in the new role of independent person. However recent indications from the Department of Communities and Local Government are that transitional provisions may allow existing independent members to hold this appointment during the first year of the new arrangements. Any such appointments however will be subject to a recruitment process and approval of Council.

7 CONSULTATION

- 7.1 This report has been distributed to each of the parish councils within the Peterborough area as the City Council is the parent authority for the purposes of the standards regime.

8 REASONS FOR RECOMMENDATIONS

- 8.1 These recommendations are made as part of the statutory requirements of the Localism Act 2011.

9 ALTERNATIVE OPTIONS CONSIDERED

- 9.1 Any alternative options have been considered during this report. The Council is required to abide by the provisions of the Localism Act 2011.

10 IMPLICATIONS

- 10.1 There are no financial or legal implications, other than those contained within the body of the report.

11. BACKGROUND DOCUMENTS

- 11.1 Reports to the Standards Committee in the last civic year.
11.2 Alternative Codes issued by the Local Government Association