

## Item 12

## Code of Conduct

Report of the Corporate Portfolio Holder

### Recommended:

1. That the Code of Conduct attached as Annex 1 to this report be adopted as the Code of Conduct to apply to Test Valley Borough Council Councillors
2. That the functions set out in Annex 4 to this report and currently carried out by the Standards Committee are delegated to the General Purposes Committee.
3. That Test Valley Association of Parish & Town Councils be asked to appoint three parish councillors who may be consulted in connection with a complaint alleging failure by a parish or town councillor to comply with the code of conduct of a parish or town council within the borough.
4. That the Head of Legal & Democratic Services be delegated authority to make necessary amendments to the Constitution to take account of the changes that flow from recommendations 1 to 3.
5. That the Head of Legal & Democratic Services carry out a review of the Code of Conduct after twelve months

### SUMMARY:

- The Localism Act 2011 changes the ethical framework that applies to councils within England.
- Each council is free to adopt its own code of conduct and to set its own arrangements for dealing with allegations of failure to comply with the code of conduct.
- This report provides for the Council to adopt its Code of Conduct, delegate the functions relating to ethical standards to the General Purposes Committee and ask Test Valley Association of Parish & Town Councils to appoint three parish councillors to be consulted in relation to complaints affecting parish and town councillors.

## **1 Introduction**

- 1.1 The Localism Act 2011 (the Act) abolishes the current framework affecting all councils in England. This includes the Code of Conduct adopted in 2007 and the requirement to have a Standards Committee, Independent Members and Parish Council representatives.
- 1.2 The Act requires Councils to :
- Promote and maintain high standards of conduct by its members and co-opted members.
  - Adopt a code of conduct that applies to members when they are acting in their capacity as members
  - Adopt procedures for dealing with allegations of failure to comply with codes of conducts. For parish and town councils, this function is undertaken by their principal council
  - Compile a Register of Interests for members that is to be available for inspection by the public and to be published on the council's web site. With regard to parish and town councils their registers will be published on the principal council's web site if they do not have their own
  - Appoint at least one Independent Person. Item 11 on this agenda refers to this.
- 1.3 The new ethical framework comes into force on 1<sup>st</sup> July 2012.

## **2 The New Code of Conduct**

- 2.1 Section 28 of the Act sets out the requirements for a code of conduct, namely that it must comply with seven principles set out in Section 28(1). These are set out in paragraph 4 of Part 1 of the draft Code of Conduct in Annex 1. There are no other legal requirements.
- 2.2 Draft codes of conduct have been put forward by the Local Government Association (LGA) and the Department of Communities and Local Government (DCLG). These are attached at Annexes 2 and 3 respectively. In addition the Association of Council Secretaries & Solicitors ( ACSeS - an organisation of senior local government officers, most of whom are solicitors and monitoring officers) also produced a draft code and the proposed Code of Conduct is based on this.
- 2.3 The three draft codes were considered by the Standards Committee on 14<sup>th</sup> May 2012 and by a member workshop on 19<sup>th</sup> June. The consensus on both occasions was that the Code of Conduct should contain more than a reference to the seven principles and general behavioural requirements and should be based on the ACSeS draft. The proposed Code of Conduct attached as Annex 1 reflects this consensus.
- 2.4 The proposed Code of Conduct is divided into three parts and each is summarised below.

#### 2.4.1 **Part 1**

This sets out when it applies to members and also contains the seven principles. The code only applies to members when acting in the role of a member of Test Valley Borough Council.

#### 2.4.2 **Part 2**

2.4.3 This sets out the general obligations for members and reflects those in the current code. The consensus at the work shop was that it is helpful to members, the public and those members considering complaints about alleged breaches for the behaviours expected of members to be set out in the code.

#### 2.4.4 **Part 3**

2.4.5 This sets out what is meant by and the requirements in relation to interests. This is the part of the code that has seen the greatest change. This is because the Act has abolished the concepts of personal and prejudicial interests and introduced Disclosable Pecuniary Interests. In addition to these the workshop consensus was that the Disclosable Pecuniary Interests were too narrow in extent and that members who declare interests should be required to leave the meeting as happens now with prejudicial interests.

#### 2.4.6 **Disclosable Pecuniary Interests**

- (a) These are the only interests specified in the Act and they are set out in the Schedule to the Code of Conduct and are interests of a member, his/her spouse, his/her civil partner or someone with whom he/she is living as husband and wife or civil partner. The interest is therefore no longer just that of the member.
- (b) The Act creates criminal offences in relation to these pecuniary interests and details of these are set out in paragraph 6 of Part 3.
- (c) These interests have to be included in the Register of Interests that is required to be both available for public inspection and published on the Council's web site.
- (d) These interests are fairly narrow in that they do not cover matters that affect a member (as opposed to being an interest of a member or spouse etc), such as a planning application by a neighbour that might have an impact on a member's property or a contract that a member's son or daughter might have with the Council.

#### 2.4.7 **Code of Conduct Interests**

- (a) This is the term that has been used in drafting the Code of Conduct to cover those interests that are in addition to the legislative requirement. Concern was expressed at the workshop that matters such as planning applications on neighbouring land etc. are not covered by the legislation and the consensus was that these should included. It was also considered that interests should include those of family members and close friends.

- (b) The scope of these interests is less than that of the personal interests in the current code in that it only covers interests that affect the member and those of family and close friends.
- (c) The definition of the interests has been linked to the pecuniary interests set out in the Schedule to the code so as not to widen the nature of the interest beyond the statutory requirement.

#### **2.4.8 Sensitive Interests**

- (a) The definition of these is set out in paragraph 3 of Part 3 and remains the same as now

#### **2.4.9 Registration of Interests**

- (a) The Act only requires interests to be notified to the Monitoring Officer in accordance with paragraphs 4(b) and (c) of Part 3. However the current register of interests will no longer have a legal force after the commencement of the new regime and the forms include items that no longer need to be disclosed. Therefore a requirement to notify Disclosable Pecuniary Interests within 28 days of the adoption of this code has been included in paragraph 5(f) of Part 3.

#### **2.4.10 Disclosure of Interests**

- (a) Paragraph 5 of Part 3 sets out the requirements on members regarding disclosure of interests.
- (b) The only requirements set out in the Act are those in paragraphs 5(a), (b) and (c). However the workshop consensus was that if a member has an interest in a matter under consideration at a meeting he or she should leave the room. Therefore the additional provisions have been included. The Act does not permit members with Disclosable Pecuniary Interests to make a statement although the Council can allow this in relation to Code of Conduct Interests and provision for this has been included.
- (c) All the interests are pecuniary in nature and therefore all are treated the same with regard to declaration at meetings and vacating the room while the item in which the member has the interest is under discussion.

### **3 Functions of the Standards Committee**

- 3.1 The Council is no longer required to have a Standards Committee. Nor is it required to appoint Independent Members and Parish Representatives to its decision making body that takes the place of the statutory Standards Committee.
- 3.2 The Council needs to have a decision making body that can deal with complaints alleging failure to comply with the Code of Conduct. This body should also have general oversight of the Council's duty to promote and maintain high standards of conduct of its members and monitor the operation of the Code of Conduct. The relevant functions are set out in Annex 4.

- 3.3 The Council already has a General Purposes Committee and it is recommended that it should have these functions included within its delegation. It will be up to the Committee to delegate the functions to a sub-committee and determine the procedure for dealing with complaints.

#### **4 Parish Representatives**

- 4.1 As indicated above there is no requirement to appoint parish representatives, however the workshop consensus was that there is merit in having a parish view available in relation to complaints concerning parish and town councillors. The Council is unable to co-opt parish representatives onto its decision making body. However they are able to have a consultative role, similar to that of the Independent Person (Item 11 on the Council agenda refers); the extent of that role will be determined by the General Purposes Committee when it agrees the procedures to be adopted for dealing with complaints.
- 4.2 It is therefore recommended that the Test Valley Association of Parish & Town Councils be asked to appoint representatives for this consultative role. As with the Independent Persons, it is recommended that three representatives be appointed.

#### **5 Changes to the Constitution**

- 5.1 The new ethical arrangements will result in changes to the Constitution. These include Article 9 (the Standards Committee), the Code of Conduct itself and the Public Participation Scheme. There will undoubtedly be other small changes. It is recommended that the Head of Legal & Democratic Services be given delegated authority to make these changes.

#### **6 Review of the Code of Conduct**

- 6.1 In view of the fact that the Code of Conduct is not a statutory code, members at the workshop were of the view that it should be reviewed after twelve months to see how it is working. This is a sound suggestion.
- 6.2 Since the workshop the Head of Legal & Democratic Services has been advised that at a recent HLOWLA meeting there was broad support for exploring the possibility of a common code of conduct across Hampshire. This will be led by the Clerk to the Hampshire Fire & Rescue Authority. The Head of Legal & Democratic Services will become involved on behalf of this Council and report back on the outcome to the General Purposes Committee.

#### **7 Options and Option Appraisal**

- 7.1 The Council has a legal obligation to adopt a code of conduct that complies with the seven principles set out in Section 28(1) of the Localism Act 2011 (and in paragraph 4 of Part 1 of the proposed Code of Conduct).
- 7.2 The draft codes considered by both the Standards Committee and the member workshop are those attached in Annexes 1, 2 and 3.

- 7.3 The Code of Conduct that the Council adopts needs to be clear so that both councillors and members of the public are aware of the requirements for councillors' behaviour. In addition, members of the body that considers complaints alleging failure to comply with the Code have to have a clear code against which to consider the complaints.
- 7.4 Both the LGA and DCLG codes are very general and are not considered clear enough for the requirements of a code of conduct.
- 7.5 The proposed Code of Conduct in Annex 1 is put forward as having the clarity needed and is therefore recommended.

## **8 Resource Implications**

- 8.1 There are none in relation to the adoption of the Code of Conduct.

## **9 Legal Implications**

- 9.1 The Council has a duty to promote and maintain high standards of conduct by its members. It is also required to adopt a code of conduct that complies with the seven principles set out in Section 28(1) of the Localism Act 2011 (and set out in paragraph 4 of Part 1 of the proposed code of conduct) and to adopt procedures to deal with complaints alleging failure to comply with a code of conduct. The format of the code and the procedures to be adopted are for each council to determine.

## **10 Conclusion**

- 10.1 The Council has to introduce a new code of conduct and make arrangements for dealing with complaints alleging failure to comply with the Code of Conduct and an oversight of the new ethical regime.
- 10.2 In view of the need for clarity over the behaviour expected of members, not only for members but also for the public and those members considering complaints, a code that goes beyond the bare minimum is recommended. The proposed Code of Conduct in Annex 1 meets this need and its content was considered appropriate at the recent workshop involving members. It is therefore recommended for approval.
- 10.3 In view of the fact the Council is no longer required to have a Standards Committee, it is recommended that the General Purposes Committee be delegated its functions the dealing with complaints alleging failure to comply with the code and an oversight of the new ethical regime. These are set out in Annex 4.
- 10.4 To assist parish and town councillors complained against and members dealing with complaints concerning parish and town councillors, it is appropriate that the Test Valley Association of Parish & Town Councils be asked to appoint three representatives that may be consulted as required by the procedures to be adopted by the General Purposes Committee.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
LGA framework code of conduct and guidance			
DCLG illustrative code of conduct			
ACSeS draft code of conduct			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	4	File Ref:	
(Portfolio: Corporate) Councillor Busk			
Officer:	Susan Tovey	Ext:	8401
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