

TELFORD & WREKIN COUNCIL

FULL COUNCIL – 3rd MAY 2012

THE MEMBERS' CODE OF CONDUCT AND THE NEW ETHICAL FRAMEWORK

REPORT OF THE MONITORING OFFICER AND ASSISTANT DIRECTOR: LAW, DEMOCRACY AND PUBLIC PROTECTION

1. PURPOSE

- 1.1 To consider recommendations from the Standards Committee about proposals for the new standards regime at Telford & Wrekin Council in accordance with the provisions of the Localism Act 2011.

2. RECOMMENDATIONS

- 2.1 That the Council creates a politically balanced Standards Committee comprising of 7 members of the Council including at least one member of the Executive and a Hearings Sub Committee, (membership to be determined by the Standards Committee) (approving the terms of reference as set out in Appendix 1) which will come into effect on 1st July 2012 or as may otherwise be specified by regulation made pursuant to Part 1 of the Localism Act 2011;
- 2.2 Subject to 2.3 below that the Council approve the draft Code of Conduct for adoption (as attached at Appendix 2 of this report) as the Council's Code of Conduct which will come into effect on 1st July 2012 or as may otherwise be specified by regulation made pursuant to Part 1 of the Localism Act 2011;
- 2.3 That Council delegates to the Monitoring Officer authority to make necessary amendments to the Code of Conduct in consultation with the Deputy Leader to accommodate the provisions of Regulations that may be made pursuant to the Localism Act 2011; and
- 2.4 The appointment of the independent person is brought to the first Council meeting after completion of the recruitment process.

3. SUMMARY

- 3.1 The Localism Act 2011 and regulations made under it will replace the Council's existing standards regime. This report outlines the recommendations to Council made by the Standards Committee for new arrangements to be adopted including a new Standards Committee and a new Code of Conduct for members.

4. PREVIOUS MINUTES

Standards Committee 21st September 2011
Standards Committee 21st April 2009 (ST-39)
Standards Committee 18th June 2009

Standards Committee 17th June 2010
Standards Committee 16th June 2011
Standards Committee 8th December 2011
Standards Committee 8th February 2012

5. INFORMATION

5.1 The Localism Act 2011 (“the Act”) received royal assent on 15th November 2011 and makes significant changes to the Councillor Code of Conduct regime which can be summarised as follows.

5.2 Changes to the Standards Regime – A summary of the key points

When will it be implemented?

1st July 2012 is the stated date but we are still awaiting regulations to support the principle legislation and accordingly we should be prepared for the possibility of a further delay in the timetable.

What has gone?

In short, Standards for England has been abolished as have the model codes, Councillor undertakings to comply with the codes, Standards committees and Independent Members. This will end the current system of complaints for breaches of the code, referrals sub-committees, review hearings, investigations and hearings (either internally or by the First Tier Tribunal) to consider investigation reports.

When is this happening?

The changes are taking place now and we are currently in a transitional period where local authorities are expected to resolve all outstanding complaints and the current planned date for implementation of the new system is the 1st July 2012.

What is replacing it?

General principles

The Borough Council and Town and Parish Councils must continue to promote and maintain high standards of conduct by members and co-opted members.

A new code

It is specifically required that such authorities must adopt a code of conduct which must be consistent with the seven principles of selflessness, integrity, honesty, objectivity, accountability, openness and leadership. It is up to each authority to adopt its own code and there is no guidance on what it should include.

Town and Parish Councils

Town and Parish Councils may choose to adopt the Borough’s Code of Conduct and so Town and Parish Council Clerks have been kept up to date with developments.

Breaches of the code

The Borough Council has to have in place arrangements for investigations and consideration of investigation reports for both complaints against its members and members of Town and Parish Council.

The role of the Independent member

This is going to change – the Borough Council has a duty to appoint an Independent Person and to consult them during an investigation. An Independent Person could also be consulted by the member who has been complained about. It is proposed that there is a joint appointment for this Council and the Combined Fire Authority (and possibly Shropshire Council) and representatives from each participating authority will be involved in the recruitment process

Interests

New pecuniary interests are created which must be disclosed within 28 days of taking office. Regulations will define what a disclosable pecuniary interest is. Note that they will apply both to the Councillor and his/ her spouse/ civil partner etc. Having this type of interest will prohibit the Councillor from participating or voting on the matter at the meeting but, unless it has not previously been disclosed it need not be disclosed at the meeting. It will be up to the individual authority to determine if the Councillor also has to leave the room. (The draft code before members for consideration today does include such a provision, a position that was supported by the Standards Committee) Obviously that Councillor cannot then be further involved in that matter. Dispensations can be secured in certain circumstances

The Register of Interests

The new interests' regime will require registration and disclosure of the defined pecuniary interests for both the Borough and Town and Parish Councils. The Register will be available for public inspection and will be published on the authority's (and the Town or Parish Council's) web-site.

Sanctions

There is nothing currently published that details the sanctions although it appears that naming and shaming is the only option available to the Council (removal from committees/ withdrawal of the Group Whip etc could only be carried out with the approval of the relevant Group Leader).

Offences

There are new criminal offences, failure to disclose defined pecuniary interests, providing false or misleading information about interests, taking part in decisions (debate or voting) and having further involvement in the matter. The maximum fine is £5,000 and up to 5 year disqualification. Such offences must be initiated by the Director of Public Prosecutions and there is a defence of reasonable excuse. This is a high bench mark and will mean that only the most serious offences are ever likely to be prosecuted.

5.3 Decisions for the Council

The changes detailed above require the Council to replace the current standards framework. The Standards Committee have looked at the new legislation and make the following suggestions to full Council:-

- A. That a Standards Committee is maintained to administer the standards framework and ensure that the Council complies with its statutory duty to promote and maintain high standards of conduct by members and co-opted members. The Committee proposes that it is politically balanced with an elected member as Chairman and includes a member of the Executive on the Committee. The terms of reference proposed by the Standards Committee are attached to this report at

Appendix 1. This proposed new structure for the Committee does comply with the statutory provisions.

- B. That the Council adopt a new Code of Conduct which is compliant with the legislation and gives due consideration to the seven principles referred to at paragraph 5.2 above and is aligned to the Council's co-operative values. Also the Code sets out **draft** (subject to Regulations that have not yet been published) rules for members to observe when they have a disclosable pecuniary interest. The draft code recommended by the Standards Committee is attached to this report at Appendix 2. Members should note that on the 10th April 2012 the Local Government Association circulated a template code and guidance note. This has been reviewed and is not substantially different in form to the proposal in front of members for consideration today that has been considered and approved by the Standards Committee and is available as a background paper to this report.
- C. The appointment of the independent person is brought to the first Council meeting after completion of the recruitment process. The appointment must be approved by a majority of elected members and it is suggested that this is initially for a four year term.

Due to the possibility of regulations being released close to the implementation date, the Council is asked to consider allowing a delegation to the Monitoring Officer, in consultation with the Deputy Leader, to allow him to make any changes required to ensure that the new code and structure are compliant with the legislation.

6. **EQUALITY AND DIVERSITY**

- 6.1 The draft code and arrangements have been subject to an equality impact assessment and the conclusion was that this Code and procedure are classed as low impact and accordingly a full impact assessment is not required

7. **ENVIRONMENTAL IMPACT**

- 7.1 No implications.

8. **LEGAL COMMENT**

- 8.1 At present the regime for the assessment and determination of Code of Conduct complaints (as set out in the Local government Act 2000 (as amended) and associated legislation) is in a transitional phase. The current system at a local level remains in force without provision for referrals to Standards for England which has now been abolished. The published timetable envisages that the changes will take effect from 1st July 2012 at which point the current regime will cease completely and the new framework will come into force.

9. **FINANCIAL IMPLICATIONS**

- 9.1 The cost of standards investigations together with the management and administration of the Standards Committee are currently met from within the Legal Services revenue budget. The Chair of Standards Committee receives a Special Responsibility Allowance (SRA) of £3,935 p.a. There are also 4 co-opted members who each receive £260 p.a. in accordance with the Members' Remuneration Scheme and as set out in the Constitution.
- 9.2 If an elected chair is appointed under the proposals there is the potential for a Special Responsibility Allowance (the value of which would have to be determined and if it is greater than the current SRA would be an additional cost to the Council). There will also be costs associated with the role of Independent Person;

the value will depend on the appointment made i.e. if a 'professional' person is appointed fees may be applicable. It is difficult to assess any further financial implications of the changes to the Standards Regime set out in the Localism Act 2011 at present as the detailed regulations are not yet available.

10. WARD IMPLICATIONS

10.1 Borough wide

11. BACKGROUND PAPERS

11.1 The Localism Act 2011

11.2 Local Government Association template code of conduct and guidance note

End of Report

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