

COUNCIL - 21ST JUNE 2012

AGENDA ITEM 7 RECOMMENDATIONS OF COMMITTEES AND THE EXECUTIVE ADDENDUM TO AGENDA

Minute

STANDARDS COMMITTEE: 13TH JUNE 2012

7 LOCALISM ACT 2011: A NEW FRAMEWORK FOR STANDARDS

The Committee received a report on the requirements of the Localism Act 2011 and the need to establish a new framework for standards.

The Localism Act 2011 abolished the current "Standards" regime and replaced it with a more locally focussed process for regulating Member Conduct. There would no longer be a national Code of Conduct but Councils would have to adopt their own Codes and these had to be consistent with certain principles.

The Council would have to establish new arrangements under which allegations of Member misconduct could be considered and, if appropriate, investigated and it would have to appoint at least one "independent person" whose views would be sought before a decision on an allegation was made.

The Monitoring Officer had to establish and maintain a register of interests, ensure that this was available for inspection and published on the website. Members would have to declare pecuniary interests on election to office and these disclosable pecuniary interests were specified in Regulations. It would be a criminal offence for Members to deliberately withhold or misrepresent a financial interest.

The Act imposed a new duty on Council's to promote and maintain high standards of conduct by Members.

The report set out relevant statutory powers, background information, the principal features of the new standards framework and issues for the Council to consider - namely the need for:

- a new Member Code of Conduct
- a reconstituted Standards Committee
- appointment of "independent persons"
- procedures and protocols for dealing with complaints
- a new register of interests
- procedures in relation to disclosure at and withdrawal from meetings

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- the role and involvement of Parish Councils
- training

The report covered financial issues, legal, financial, equality and policy framework implications and consultation. The report had appended to it a draft Member Code of Conduct and terms of reference for a reconstituted Standards Committee.

Since despatch of the agenda, it was reported that Regulations had been issued confirming that the new standards framework would commence from 1st July 2012 and defining the new statutory "disclosable pecuniary interests".

The Regulations also introduced a provision allowing (prior to the 1st July 2013) the appointment of existing independent members as "independent persons" subject to public advertisement and recruitment to the new role.

Additionally (since despatch of the agenda) a number Members had suggested that the proposed new Code of Conduct could usefully be strengthened by inclusion of requirements on non-pecuniary interests. A revised draft incorporating and highlighting suggested changes was accordingly circulated at the meeting.

The Council had a large degree of local discretion on the new Code provided it was consistent with certain principles. The draft comprised six parts and the majority was either statutory or based on the Localism Act and Regulations made under this primary legislation. The principal discretionary elements (not based on the Act) related to the inclusion of general obligations extracted from the current Code and a requirement to declare non-pecuniary interests.

A range of issues were discussed and, where appropriate, answers and explanations were provided by the officers. In relation to one issue - the status of co-opted members and who could be appointed into this capacity specifically for the Standards Committee - it was agreed a report clarifying the legal position and scope for co-optees, for example Town and Parish Councillors, independent members and independent persons, should be submitted to the next meeting of the Standards Committee. There was a degree of consensus that voting co-optees were desirable.

RECOMMENDED that:

- (i) the Code of Conduct set out at Appendix A to these Minutes be adopted with effect 1st July 2012 and incorporated in the Council's constitution in place of the current Member Code of Conduct;

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- (ii) Salfords and Sidlow Parish Council and Horley Town Council be recommended to adopt the Borough Council's Code of Conduct;**
- (iii) subject to report on the issue of co-opted members, as referred to above, to a future meeting of the Standards Committee, the draft Terms of Reference (including proposed composition) for a reconstituted Standards Committee, as set out at Annex 2 to the circulated report, be approved and incorporated into the Council's Constitution;**
- (iv) two independent persons be appointed and the Monitoring Officer be authorised to commence the recruitment process leading to recommendation on appointments by the Standards Committee to Council;**
- (v) in relation to allegations of misconduct by Members, the Monitoring Officer be asked to develop procedures and protocols for consideration and approval by the Standards Committee;**
- (vi) the Monitoring Officer be authorised to establish and maintain registers of interest for the Borough and Parish Councils in accordance with legislative requirements, with effect from 1st July 2012;**
- (vii) the requirement for Members to withdraw from a meeting when they have a disclosable pecuniary interest be incorporated in the new Code of Conduct;**
- (viii) the Monitoring Officer be requested to work closely with the Parish Clerks and help the Parish Councils with all the new requirements;**
- (ix) Parish Council representation on the Standards Committee, on a co-optee basis, be retained in accordance with the draft Terms of Reference set out at Annex 2 to the circulated report;**
- (x) the Monitoring Officer be requested to provide suitable training on the new standards framework for all Borough and Parish Councillors; in respect of Borough Councillors the training be deemed obligatory; and**
- (xi) the new Code of Conduct be reviewed by the Standards Committee after 12 months and/or in the light of any amending/further Regulations on the matter.**

**APPENDIX A
MINUTE 7****APPENDIX A
MINUTE 7****REIGATE AND BANSTEAD BOROUGH COUNCIL****MEMBER CODE OF CONDUCT**

(Adopted by the Council on 21st June 2012 with effect from 1st July 2012
in accordance with Chapter 7, Regulation 28 of the Localism Act 2011)

This Code of Conduct applies to all Members and co-opted members of the Authority.

It is based on and consistent with the principles set out below and should be applied alongside the requirements of the Council's constitution and specifically the protocols on Member/Officer relations and development management.

In addition to these requirements, Members must ensure that they are aware of and comply with all legal obligations that apply to them as a Member of the Authority and act within the law and such relevant Regulations as shall apply at any time.

Part 1**Principles***Selflessness*

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person or organisation.

Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasion avoid the appearance of such behaviour.

Objectivity

Members should make decisions on merit, including making public appointments, awarding contracts and recommending individuals for rewards and benefits.

Accountability

Members should be accountable to the public for their actions and the manner in which they carry-out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

Members should be as open as possible about their actions and those of their Authority and should be prepared to give reasons for those actions.

Leadership

Members should promote and support these principles by leadership and by example and should act in a way that secures or preserves public confidence.

General Obligations

(1) You must not:

- (a) do anything which may cause your Authority to breach any of the equality enactments as defined in the Equality Act 2010;
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be involved with a complaint under the Code;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your Authority;
- (e) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the Authority, which includes the written advice of the Monitoring Officer;
- (g) prevent another person from gaining access to information to which that person is entitled by law;
- (h) conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute;
- (i) use or attempt to use your position as a Member improperly to confer on or secure for yourself any other person, an advantage or disadvantage.

(2) You must:

- (a) treat others with respect;
- (b) ensure that you comply with the requirements which the Bribery Act 2010 places on Members and on the Council as a whole;
- (c) when using or authorising the use by others of the resources of your Authority:
 - (a) act in accordance with your Authority's reasonable requirements;
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes), nor authorise the use by others of those resources or any other resources, the use of which is controlled or influenced by your Authority;
- (d) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986, or any legislation amending or replacing it, and any guidance issued by your Authority;
- (e) When reaching decisions on any matter have regard to any relevant advice provided to you by:
 - (a) the Authority's chief finance officer; or

- (b) the Authority's monitoring officer, where that officer is acting pursuant to his or her statutory duties ; and

do so on the merits of the circumstances and in the public interest, and give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your Authority.

Part 3

Interests

Registration and Disclosure of Pecuniary Interests

- (1) A Member must notify the Monitoring Officer of any "disclosable pecuniary interests" before the end of 28 days beginning with the day the person became a Member and thereafter as they occur;
- (2) Where a person becomes a Member as a result of re-election or re-appointment, paragraph (1) applies only as regards to disclosable pecuniary interests not entered in the Authority's register;
- (3) Interests become disclosable pecuniary interests when they relate to the Member or a relevant person – see interpretation under Part 6;

Disclosable Pecuniary Interests

- (4) Disclosable pecuniary interests are defined as:

<i>Subject</i>	<i>Prescribed description</i>
	See Part 6 of this code for interpretations
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Corporate tenancies Any tenancy where (to your knowledge):

- (a) the landlord is the relevant authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities Any beneficial interest in securities of a body where:

- (a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and
- (b) either:

- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

- (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Other Interests

(5) Other (non-pecuniary) interests are not formally defined either in legislation or for the purposes of this Code. It is therefore the responsibility of individual Members to determine whether they have a non-pecuniary interest. In doing so, they should consider whether an objective third party would reasonably consider that they have an interest, and they may also seek the advice of the Monitoring Officer.

Disclosure and Participation at Meetings or Involvement as a Single Member

(6) The following provisions apply if a Member is present at a meeting of the Authority and is aware that he/she has a disclosable pecuniary interest and/or a non-pecuniary interest in any matter to be considered, or being considered, at the meeting.

(7) If a Member has a disclosable pecuniary interest in a matter being considered at a meeting of the Authority they must:

- Disclose that interest (existence and nature – unless it is a sensitive interest – see paragraphs 12 to 14);
- Not participate in any discussion or vote; and
- Withdraw from the meeting whilst that business is transacted.

(8) If a Member has a non-pecuniary interest in a matter being considered at a meeting of the Authority they must:

- Disclose that interest (existence and nature - unless it is a sensitive interest – see paragraphs 12 and 14); and

if it could reasonably be regarded as so significant as to prejudice the Member's judgement of the public interest:

- Not participate in any discussion or vote; and
- Withdraw from the meeting whilst that business is transacted.

- (9) Unless the interest is already registered or subject of a pending notification, disclosable pecuniary interests disclosed at a meeting in accordance with (7) above must subsequently and within 28 days be notified to the Monitoring Officer for inclusion in the Authority's register;
- (10) In relation to Executive functions discharged by a Member of the Authority acting alone, where that Member has a disclosable pecuniary interest and/or a non-pecuniary interest (which could reasonably be regarded as so significant as to prejudice the Member's judgement of the public interest) in any matter to be dealt with and the Member is aware that this condition is met:
 - (a) if the interest is not entered in the Authority's register and is not subject of a pending notification, the Member must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when the Member becomes aware that he/she has a disclosable pecuniary interest and/or the non-pecuniary interest; and
 - (b) the Member must not take any steps, or any further steps in relation to the matter, except for the purposes of enabling the matter to be dealt with otherwise than by the Member.
- (11) Where a Member gives a notification of a disclosable pecuniary interest under paragraphs 7 and 10 (a) the Monitoring Officer must arrange for the interest notified to be entered in the Authority's register.

Sensitive Interests

- (12) Members may have a pecuniary or non-pecuniary interest which if disclosed and registered could lead to the Member, or a person connected with the Member, being subject to violence or intimidation.
- (13) In these circumstances, if the pecuniary interest is entered in the Authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the Member has an interest the details of which are withheld).
- (14) If paragraph (12 or 13) applies in relation to the interest, that provision is to be read as requiring the Member to disclose not the interest but merely the fact that the Member has a disclosable pecuniary interest in the matter concerned.

Part 4

Offences

- (1) A Member commits an offence if, without reasonable excuse, the Member fails to comply with an obligation imposed under Part 3 paragraphs (6), (7) and 8 (a) and participates in any discussion or vote in contravention of Part 3 paragraph (6).
- (2) A Member also commits an offence if he/she discloses, under the Code, information that is false or misleading and the Member knows that the information is false or misleading.
- (3) A Member who is guilty of an offence under the Code is liable on summary conviction to a fine not exceeding level 5 on the standard scale. A court dealing with a person for an offence may in addition and by Order disqualify the person for a period not exceeding 5 years from being a Member.
- (4) A prosecution for an offence may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be within a period of 12 months beginning with the date on which evidence sufficient to warrant proceedings is known to the Prosecutor.
- (5) No proceedings may be brought more than 3 years after commission of the offence or in the case of a continuous contravention, after the last date on which the offence was committed.

Part 5

Dispensations

- (1) The Authority, on written request to the Monitoring Officer, may grant a dispensation relieving a Member from the restrictions in Part 3 paragraph (7 and 8) of the Code.
- (2) A dispensation may be granted where the Authority considers that:
 - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of business;
 - (b) without the dispensation the representation of the different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
 - (c) granting of the dispensation is in the interests of persons living in the Authority's area;
 - (d) without granting a dispensation each Member of the Authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
 - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect and the period may not exceed 4 years.

Part 6

Interpretation

In this Code:

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

"co-opted member" is, as defined in the Localism Act section 27 (4) "a person who is not a member of the authority but who:

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".

"director" includes a member of the committee of management of an industrial and provident society;

"land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

"meeting" means any meeting of:

- (a) the Authority;
- (b) the Executive of the Authority;
- (c) any of the Authority's committees, sub-committees, joint committees, joint sub-committees;

(d) informal meetings with other members and/or officers relating to the discharge of the Authority's functions.

"member" includes a co-opted member;

"relevant authority" means the Council;

"relevant period" means the period of 12 months ending with the day on which you gives a notification for the purposes of section 30(1) of the Act;

"relevant person" means a Member of the Authority; and a spouse or civil partner of a Member; or a person with whom a Member is living as a husband, wife or civil partner;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.