

---

## THE LOCALISM ACT 2011 – THE NEW STANDARDS REGIME

### 1 SUMMARY

- 1.1 This report describes the changes and recommends the actions required for the Council to implement the new standards regime.

### 2 INTRODUCTION

- 2.1 The Localism Act 2011, which was enacted on 15 November 2011, makes fundamental changes to the system of regulation of standards of conduct for Councillors with the abolition of the Standards Board for England on 31 March 2012 and the introduction of a new regime to operate from 1 July 2012.
- 2.2 A revised Code of Conduct and arrangements for implementing the new regime have been developed by the Public Law Partnership, comprising authorities from across Essex, Suffolk and Hertfordshire, with a view to developing a standard code and approach to standards within the region.
- 2.3 Whilst it is a matter for each individual authority to agree the provisions, the adoption of a common approach would assist in establishing a clearer and more understandable regime for both the public and Members and provide opportunity for joint working and the sharing of resources.

### 3 DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

- 3.1 The Council will remain under a statutory duty to promote and maintain high standards of conduct for its Members.

### 4 STANDARDS COMMITTEE AND COMPOSITION

- 4.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. Notwithstanding this, there will remain a need to deal with standards issues and case-work so it would remain convenient to have a Standards Committee. The Committee would be a normal Committee of Council, without the unique features conferred by the previous legislation. Committee composition would be governed by proportionality, unless Council votes otherwise with no Member voting against. A new Committee could retain the current Committee's involvement with Member training.
- 4.2 The current Independent Members arrangement would cease with effect from 1 July 2012. The Act establishes a new category of Independent Persons who must be consulted at various stages, but provides that the existing Independent Members cannot serve as Independent Persons for five years. Whilst Independent Persons may be invited to attend meetings of the Standards Committee, co-option onto the Committee could compromise their role under the new arrangements. The Government has indicated that transitional arrangements may include the possibility of appointing existing

Independent Members as Independent Persons but guidance and detailed regulations as to how this might operate are still awaited.

- 4.3 Given the timeframe associated with the new arrangements, it would be appropriate for the District Council to maintain the existing arrangements in relation to Standards Committee Independent Members up to 1 July. The terms of office of two of the current Independent Members (Mr M Drage and Mrs L Walker) are due to expire at the conclusion of the current Municipal Year. Both Members are prepared to continue in office and it is accordingly recommended that they be re-appointed up to 1 July 2012.
- 4.4 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils. However, the current Parish Council Members of the Standards Committee will cease to hold office. Whilst technically it may be possible to explore some form of Joint Committee/Sub-Committees arrangement with each of the fourteen Town/Parish Council's across the District, a practicable approach would be for the Council to appoint three (the current number) co-opted but non voting Parish representatives to the Standards Committee. This would help inform and may give an element of weight to any parish related recommendations emanating from the work of the Committee and associated Panels.

## **5 THE CODE OF CONDUCT**

- 5.1 The current ten General Principles and Model Code of Conduct will be repealed and the requirement for Members to give a formal undertaking to comply with the Code is removed. However, it is considered reasonable to expect compliance from responsible Members of a public authority and the Council will be required to adopt a new Code of Conduct governing Members when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles:-
- Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
- 5.2 The Council has discretion on what it includes within its new Code of Conduct provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of 'Disclosable Pecuniary Interests', broadly equating to the current prejudicial interests. The provisions of the Act also require an Authority's code to contain

appropriate requirements for the registration (and disclosure) of other pecuniary and non-pecuniary interests.

- 5.3 The result is that it is not yet possible to draft Code provisions to reflect the definition of Disclosable Pecuniary Interests that will appear in regulations. However, it is possible to give an indicative view of what the Council might consider it appropriate to include in the Code in respect of the totality of all interests, including Disclosable Pecuniary Interests, other pecuniary interests and non-pecuniary interests. Accordingly, it would be sensible at this stage to prepare a Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal from the meeting, as required by the Act for Disclosable Pecuniary Interests. A proposed Code is appended to this report. The Act prohibits Members with Disclosable Pecuniary Interests from participating in authority business, and the Council can adopt a Standing Order requiring Members to withdraw from the meeting room.
- 5.4 So the Council's new Code of Conduct will have to deal with the following matters:-
- 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 Disclosable Pecuniary Interests, effectively replacing the current personal interests provisions. The Act requires that the Code contains 'appropriate' provisions for this purpose. However, until the regulations defining Disclosable Pecuniary Interests are published, it is difficult to suggest what additional disclosures would be appropriate.

## **6 DEALING WITH MISCONDUCT COMPLAINTS**

### Arrangements

- 6.1 The Act requires that the Council adopt 'arrangements' for dealing with complaints of a breach of the Code of Conduct by both District Council Members and Parish Council Members and that such complaints can only be dealt with in accordance with such 'arrangements'. Therefore, the 'arrangements' must set out in some detail the process for dealing with complaints of misconduct and the actions that may be taken against a Member who is found to have failed to comply with the Code of Conduct.
- 6.2 An advantage is that the Act repeals the requirement for separate Assessment, Review and Hearings Sub-Committees, and enables the Council to establish its own process. This could include the delegation of decisions on complaints. As the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints the

---

Council would need to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

Decision whether to investigate a complaint

- 6.3 In practice, the Standards for England guidance on the initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It could be appropriate to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and a facility to refer particular complaints to the Standards Committee where the Monitoring Officer feels that it would be inappropriate to take a decision on it. For example, where the Monitoring Officer has previously advised the Member on the matter or the complaint is particularly sensitive. Such arrangements would 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.
- 6.4 If this function is delegated to the Monitoring Officer it would be appropriate for there to be an annual report to the Standards Committee on the number and nature of complaints received, drawing the Committee's attention to areas where training or other action might avoid further complaints and keeping the Committee advised of progress on investigations.

'No Breach of Code' finding on investigation

- 6.5 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to an Assessment Sub-Committee and that the Sub-Committee takes the decision to take no further action. In practice, this decision could be delegated to the Monitoring Officer on the basis that the Monitoring Officer would refer a matter to the Standards Committee if felt appropriate. It would be sensible for copies of all investigation reports to be provided to the Independent Person to enable him/her to be able to overview current issues and for the Monitoring Officer to provide a summary report of each such investigation to the Standards Committee for information

'Breach of Code' finding on investigation

- 6.6 Where a formal investigation finds evidence of failure to comply with the Code of Conduct there may be an opportunity for local resolution, avoiding the necessity of a formal hearing. Sometimes an investigation report can cause a Member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and a complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that, at this stage, it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome.

A summary report could be provided for information to the Standards Committee.

- 6.7 Where a formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearing Panel constituted as a Sub-Committee of 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 Hearing Panel can determine whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

Action in response to a Hearing finding of failure to comply with the Code of Conduct

- 6.8 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 from Members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the Council could take in respect of the Member is limited and must be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than 'punishing' the Member concerned. In practice, this might include the following:-

- The reporting of findings to a meeting of the District Council [*or to the Parish Council*] for information;
- Recommending to the Member's Group Leader (or in the case of ungrouped Members, recommending to Council) that he/she be removed from any or all Committees or Sub-Committees.
- Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to [*or recommending that the Parish Council*] arrange training for the Member;
- Removing [*or recommending to the Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the Authority [*or by the Parish Council*];
- Withdrawing [*or recommending to the Parish Council that it withdraws*] facilities provided to the Member by the Council, such as website and/or email and Internet access; or
- Excluding [*or recommending that the Parish Council exclude*] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

- 6.9 A particular difficulty in respect of Parish Councils is that the Localism Act gives the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken. Parish Councils will be under no obligation to accept any such recommendation. However, the proposed appointment of Parish representatives to the Standards Committee, as set out in paragraph 4.4, may give an element of weight to any Parish related recommendations. The Monitoring Officer will also be recommending to the Town/Parish Council's that, in adopting a Code of Conduct, they agree to implement the outcome of any Hearings.
- 6.10 There is no requirement to put in place an appeals mechanism against decisions. A decision would be open to judicial review by the High Court if it was patently unreasonable, or if it had been taken improperly, or if it sought to impose a sanction which the Council had no power to impose.
- 6.11 In addition to the Code of Conduct, the Monitoring Officer will need to revise the current rules of procedure for the investigation and determination of complaints set out in the Constitution so that they accord with the new 'arrangements'/decisions emanating from this report. For revisions to be in place in advance of 1 July it would be appropriate for them to be submitted to the Standards Committee scheduled for 12 June 2012 for final endorsement.

## **7 INDEPENDENT PERSON(S)**

- 7.1 The 'arrangements' adopted by the Council must include provision for the appointment by the Council of at least one Independent Person.
- 7.2 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all Members of the District Council (not just of those present and voting).
- 7.3 A person is considered not to be 'independent' if:-
- he/she is, or has been within the last five years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area;
  - he/she is, or has been within the last five years, an elected or co-opted Member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted Independent Members of the Standards Committee from being appointed as an Independent Person); or
  - he/she is a relative or close friend of a current elected or co-opted Member or officer of the District Council or of any Parish Council within its area, or of any elected or co-opted Member of any Committee or Sub-Committee of such Council.

For this purpose, 'relative' comprises:-

- (a) the candidate's spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate's grandparent;
- (d) any person who is a lineal descendent of the candidate's grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

7.4 The functions of the Independent Person(s) are:-

- They must be consulted by the District Council before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding)
- They may be consulted by the District Council in respect of a standards complaint at any other stage; and
- They may be consulted by a Member or co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

7.5 This could cause some problems as it would be inappropriate for an Independent Person who has been consulted by a Member against whom a complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

7.6 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

- 7.7 As the Independent Person is not a Member of the Council or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the Scheme of Members' Allowances and could be determined without reference to the Independent Remuneration Panel.
- 7.8 In comparison to the current Chairman of the Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal member of the Committee or Panel (he/she could be co-opted as a non-voting Member but could not chair as the Chairman must be able to exercise a second or casting vote). He/she will need to be available to be consulted by Members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint.

## **8 THE REGISTER OF MEMBER INTERESTS**

- 8.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define 'Disclosable Pecuniary Interests'. The Monitoring Officer will be required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer will also be responsible for maintaining registers for Parish Councils, which will also have to be open for inspection at the District Council offices and on the District Council's website.
- 8.2 At present it is not known what Disclosable Pecuniary Interests will comprise. However, they are likely to be broadly equivalent to the current prejudicial interests. Whilst the intention is to simplify the registration requirement, the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.
- 8.3 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 8.4 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

### Registration on election or co-option

- 8.5 Each elected or co-opted Member must register all Disclosable Pecuniary Interests within 28 days of becoming a Member. Failure to register is made a criminal offence, but would not prevent the Member from acting as a Member.

- 
- 8.6 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 8.7 There is no continuing requirement for a Member to keep the register up to date, except on re-election or re-appointment, but it is likely that Members will register new interests from time to time as this would avoid the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer will have to ensure that they are entered into the register.
- 8.8 The preparation and operation of the register, not just for this Council but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than Disclosable Pecuniary Interests. There is no provision for the District Council to recover any costs from Parish Councils.

## **9 DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS**

- 9.1 Disclosable Pecuniary Interests are broadly equivalent to prejudicial interests, but with important differences.
- 9.2 The duty to disclose and withdraw arises whenever a Member attends any meeting of Council, a Committee or Sub-Committee, or of the Executive (Cabinet) or an Executive Committee, and is aware that he/she has a Disclosable Pecuniary Interest in any matter being considered at the meeting. It applies even if the Member would be absent from that part of the meeting where the matter in question is under consideration.
- 9.3 Where these conditions are met, the Member must disclose the interest to the meeting (that is declare the existence and nature of the interest). However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the Disclosable Pecuniary Interest. So a registered interest will no longer need to be disclosed at the meeting.
- 9.4 Where the Member does make a disclosure of a Disclosable Pecuniary Interest, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the Register of Interests.
- 9.5 If a Member has a Disclosable Pecuniary Interest in any matter, he/she must not:-
- Participate in any discussion of the matter at the meeting. The Act does not define 'discussion', but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
  - Participate in any vote on the matter,

Unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

- 9.6 Failure to comply with the Pecuniary Interests disclosure requirements becomes a criminal offence. The Council's Code of Conduct must make 'appropriate' provisions for disclosure and withdrawal for interests other than Disclosable Pecuniary Interests. Failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence. The requirement to withdraw from the meeting room can be covered by Standing Orders.

## 10 SENSITIVE INTERESTS

- 10.1 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 (either a Disclosable Pecuniary Interest or any other interest which he/she would be required to disclose) 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, he/she may request the Monitoring Officer to agree that the interest is a 'sensitive interest'.
- 10.2 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. The Monitoring Officer can exclude the detail of the interest from the published version of the Register of Members' Interests.

## 11 DISPENSATIONS

- 11.1 The provisions on dispensations are significantly changed by the Localism Act. At present a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on the grounds that either at least half of the members of a decision-making body have prejudicial interests or so many members of one political party have prejudicial interests in the matter that it would upset the result of the vote.
- 11.2 In future, a dispensation will be able to be granted in the following circumstances:-
- (a) That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would 'impede the transaction of the business'. In practice, this means that the decision-making body would be inquorate as a result;
  - (b) 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 any vote on the matter.
  - (c) That the authority considers that the dispensation is in the interests of persons living in the authority's area;

- (d) That, without a dispensation, no member of the Cabinet would be able to participate in the matter;
- (e) That the authority considers that it is otherwise appropriate to grant a dispensation, any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

11.3 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Localism Act gives discretion for this power to be delegated to a Standards Committee or a Sub-Committee, or to the Monitoring Officer. It could be appropriate to delegate the granting of dispensations for (a) and (d) to the Monitoring Officer in the first instance, with an appeal to the Standards Committee, and for the granting of dispensations for (b), (c) and (e) to remain with the Standards Committee after consultation with the Independent Person.

## 12 TRANSITIONAL ARRANGEMENTS

12.1 Regulations under the Localism Act will provide for the transfer of Standards for England cases to local authorities following the abolition of Standards for England, a transitional period for the determination of any outstanding complaints under the current Code of Conduct and the removal of the power of suspension and the right of appeal to the First Tier Tribunal from the start of the transitional period.

## 13 RISK IMPLICATIONS

- 13.1 There is reputational risk to the Council if adequate arrangements are not in place to maintain standards of conduct and deal with complaints and allegations of impropriety.
- 13.2 Without appropriate measures in place public confidence could be eroded and principals of good governance undermined.

## 14 LEGAL IMPLICATIONS

14.1 The Council has a statutory duty to promote and maintain high standards of conduct and is under a legal obligation to meet the requirements of the Localism Act.

## 15 PARISH IMPLICATIONS

15.1 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils and maintaining the statutory register of interests.

## 16 RECOMMENDATION

16.1 It is proposed that the Committee **RECOMMENDS** to Full Council:-

- (1) That a Standards Committee comprising eight elected Members of the District Council, appointed proportionally, and three Parish Council co-opted non-voting Members be established to commence with effect from 1 July 2012. The Committee to deal with standards issues and associated case work and to continue the current Committee's involvement with Member training.
- (2) That Mr M Drage and Mrs L Walker be appointed as Independent Members of the Standards Committee for the 2012/13 Municipal Year up to 1 July 2012.
- (3) That authority be delegated to the Monitoring Officer, after consultation with the Chairman of the Standards Committee and the Leader of the Council, to amend the draft Code of Conduct, as appended, to take account of the provisions of any forthcoming primary or subordinate legislation enacted and the publication of regulations relating to registration and disclosure.
- (4) That, subject to (3) above, the Code of Conduct, as appended with or without amendments, be adopted to be effective from the 1 July 2012 or such other date as may be appointed by the Secretary of State for the provisions of section 27 Localism Act 2011 to come into force.
- (5) That the current Member undertaking on acceptance of office regarding compliance with the Code of Conduct remains unchanged.
- (6) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct.
- (7) That authority be delegated to the Monitoring Officer, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer to seek resolution of complaints without formal investigation wherever practicable, and to have discretion to refer decisions on an investigation to the Standards Committee where the Monitoring Officer feels that it would be inappropriate to take the decision, and to report annually to the Standards Committee on the discharge of this function.
- (8) That, where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer close the matter, providing a copy of the report and findings of the investigation to the complainant, to the Member concerned and to the Independent Person, and reporting the findings to the Standards Committee for information.
- (9) That, where an investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for

information to Standards Committee. Where such local resolution is not appropriate, or not possible, the Monitoring Officer is to report the investigation findings to a Hearings Panel (Sub-Committee) of the Standards Committee for local hearing.

- (10) That authority be delegated to Hearing Panels (Sub-Committees of the Standards Committee) to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such decisions to include:-
- Reporting findings to the Council [*or to the Parish Council*] for information;
  - Recommending to the Member's Group Leader (or in the case of un-grouped Members, recommending to Council) that he/she be removed from any or all Committees or Sub-Committees.
  - Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Instructing the Monitoring Officer to [*or recommending that the Parish Council*] arrange training for the Member;
  - Removing [*or recommending to the Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the Authority [*or by the Parish Council*];
  - Withdrawing [*or recommending to the Parish Council that it withdraws*] facilities provided to the Member by the Council, such a website and/or email and Internet access; or
  - Excluding [*or recommending that the Parish Council exclude*] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- (11) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee and the Leader of the Council, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and that this function be subsequently delegated to the Standards Committee. In terms of appointment:-
- (a) The Monitoring Officer to advertise a vacancy for the appointment of one Independent Person and two Reserve Independent Persons.

- (b) A Panel, comprising three Members of the Standards Committee, be set up to short-list and interview candidates and to make a recommendation to Council for appointment.
- (12) That the Monitoring Officer prepare and maintain a new Register of Members Interests to comply with the requirements of the Act and the Council's Code of Conduct and ensure that it is available for inspection as required by the Act. The Monitoring Officer to also:-
- (a) Ensure that all Members are informed of their duty to register interests.
- (b) Prepare and maintain new Registers of Members' Interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council, and ensure that it is available for inspection as required by the Act.
- (c) Inform Parish Clerks on the new registration arrangements.
- (13) That the Constitution be amended to include a requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest, except where he/she is permitted to remain as a result of the grant of a dispensation.
- (14) That, in terms of the granting of dispensations:-
- (a) Authority be delegated to the Monitoring Officer to grant dispensations with an appeal to the Standards Committee in the following circumstances:-
- That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would 'impede the transaction of the business'.
  - That, without a dispensation, no member of the Cabinet would be able to participate in the matter.
- (b) Authority be delegated to the Standards Committee, after consultation with the Independent Person, to grant dispensations in the following circumstances:-
- 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 any vote on the matter.
  - That the Authority considers that the dispensation is in the interests of persons living in the Authority's area.

- That the Authority considers that it is otherwise appropriate to grant a dispensation.
- (15) That appropriate adjustments be made to the Council's Constitution to reflect the above decisions and that the Monitoring Officer submit revised rules of procedure for the investigation and determination of complaints ('arrangements') to the meeting of the Standards Committee scheduled for 12 June 2012 for final endorsement.  
(HLEMS)

Albert Bugeja

Head of Legal, Estates and Member Services and Monitoring Officer

---

**Background Papers:-**

None.

For further information please contact Albert Bugeja (Head of Legal, Estates and Member Services) on:-

Phone: 01702 318130

Email: [albert.bugeja@rochford.gov.uk](mailto:albert.bugeja@rochford.gov.uk)

If you would like this report in large print, Braille or another language please contact 01702 318111.

---

## COUNCILLOR CODE OF CONDUCT

### PART 1 GENERAL PROVISIONS

#### Introduction and interpretation

As a Member you are a representative of this Authority and the public will view you as such. Therefore, your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority.

This Code as a whole is consistent with the 'Nolan Principles', which are appended, and the provisions of S29(1) Localism Act 2011.

In this Code:-

'meeting' means any meeting of:-

- (a) The Authority.
- (b) The Executive of the Authority.
- (c) Any of the Authority's or the Executive's Committees, Sub-Committees, Joint Committees or Joint Sub-Committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members.
- (d) Any briefings by officers and site visits organised by the authority.

'Member' includes a co-opted Member.

#### 1. Who does the Code apply to?

- (1) This Code applies to all Members of Rochford District Council, including co-opted Members.
- (2) It is your responsibility to comply with the provisions of this Code.

#### 2. What does the Code apply to?

- (1) You must comply with this Code whenever you:-
  - (a) conduct the business of your Authority, or
  - (b) you are acting as a representative of your Authority.
- (2) This Code has effect in relation to your conduct in your official capacity.

- (3) Where you act as a representative of your Authority:-
- (a) on another relevant Authority, you must, when acting for that other Authority, comply with that other Authority's Code of Conduct; or
  - (b) on any other body you must, when acting for that other body, comply with your Authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **3. General obligations**

- (1) You must treat others with respect.
- (2) You must uphold the law.
- (3) You must not:-
  - (a) Do anything which may cause your Authority to breach any of the equality enactments.
  - (b) Bully any person.
  - (c) Intimidate or attempt to intimidate any person who is or is likely to be:-
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with his or her Authority's Code of Conduct.
  - (d) Do anything which compromises or is likely to compromise, the impartiality of those who work for, or on behalf of, your Authority.

### **4. Confidential Information**

You must not:-

- (a) 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:-
  - (aa) reasonable and in the public interest; and
  - (bb) made in good faith and in compliance with the reasonable requirements of the Authority.
- (b) Prevent another person from gaining access to information to which that person is entitled by law.

**5. Conferring an advantage or disadvantage**

You:-

- (a) must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your Authority:-
  - (i) act in accordance with your Authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**PART 2 MEMBERS INTERESTS****6. Disclosable Pecuniary Interests**

6.1 You have a disclosable pecuniary interest in any business of your Authority if it is of a description set out in 6.2<sup>1</sup> below and is either:-

- (a) An interest of yours.
- (b) An interest of your spouse.
- (c) An interest of your civil partner.
- (d) An interest of a person you are living with as a spouse or civil partner.

And, in the case of paragraphs 6.1 (b) – 6.1 (c), you are aware that that other person has the interest

6.2 'Disclosable Pecuniary Interests' are defined by *(regulations still awaited)* and are:-

- (a) *(to be completed when regulations are issued)*

**7. Other Pecuniary Interests<sup>2</sup>**

7.1 You have a pecuniary interest in any business of your Authority where either:-

- (a) It relates to or is likely to affect:-
  - (i) any employment or business carried on by you;
  - (ii) any person or body who employs or has appointed you;
  - (iii) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (iv) any person or body who has a place of business or land in your Authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (v) any contract for goods, services or works made between your Authority and you or a firm in which you are a partner, a company

<sup>1</sup>Regulations still awaited. Paragraphs 6.2 and 7 to be given further consideration when regulations are available

<sup>2</sup>Regulations still awaited. Paragraphs 6.2 and 7 to be given further consideration when regulations are available

- of which you are a remunerated director, or a person or body of the description specific in paragraph (iv);
- (vi) any land in your Authority's area in which you have a beneficial interest;
  - (vii) any land where the landlord is your Authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (iv) is, the tenant;
  - (viii) any land in the Authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) A decision in relation to that business might reasonably be regarded as affecting your financial position or financial position of a relevant person to a greater extent than the majority of:-
- 1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - 2. (in all other cases) other council tax payers, ratepayers or inhabitants of your Authority's area.

## 8. Non-Pecuniary Interests

8.1 You have a non-pecuniary interest in any business of your Authority where either:-

- (a) It relates to or is likely to affect:-
- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your Authority;
  - (ii) any body:-
    - 1. exercising functions of a public nature;
    - 2. directed to charitable purposes; or
    - 3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);of which you are a member or in a position of general control or management;
  - (iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25; or

- 
- (b) A decision in relation to that business might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-
    - (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
    - (b) (in all other cases) other council tax payers, ratepayers or inhabitants of your Authority's areas

## 9. 'Relevant Persons'

- 9.1 For the purposes of paragraphs 7.1(a) (ix) and 8.1(a) (iv) a relevant person is:-
- (a) a member of your family or any person with whom you have a close association;
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company or which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of which such persons are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (e) any body of a type described in paragraph 8(a) (i) and (ii) of which such persons are members or in a position of general control or management

## 10. Disclosure of Interests

- 10.1 Subject to sub-paragraphs 10.2 to 10.5, where you have a disclosable pecuniary interest, any other pecuniary interest or a non-pecuniary interest in any business of your Authority and you are present at a meeting of your Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your register of Interests or for which you have made a pending notification.
- 10.2 Sub-paragraph 10.1 only applies where you are aware or ought reasonably to be aware of the existence of the pecuniary interest.
- 10.3 Where you have an interest in any business of your Authority which would be disclosable by virtue of paragraph 10.1 but by virtue of paragraph 14

(sensitive interests) details of the interest are not registered in your Authority's published Register of Members' Interests and that the interest is a disclosable pecuniary interest (if that is the case) but you need not disclose the nature of the interest to the meeting.

- 10.4 Where you have a pecuniary interest in any business of your Authority and a function of your Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's Monitoring Officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 10.5 Where you have an interest in any business of your Authority which would be disclosable by virtue of paragraph 10.1, and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 10.6 In this paragraph 'executive decision' is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## 11. Disclosure of Interests generally<sup>3</sup>

- 11.1 Subject to sub-paragraph 11.2 where you have a pecuniary interest in any business of your Authority you also have a disclosable pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.
- 11.2 You do not have a disclosable pecuniary interest in any business of your Authority where that business:-
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8.1 (a) (i) and (ii);
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.1 (a) (i) and (ii); or
  - (c) relates to the functions of your Authority in respect of:-
    - (i) housing, where you are a tenant of your Authority provided that those functions do not relate particularly to your tenancy or lease;

<sup>3</sup>Regulations from the Secretary of State are currently awaited as to the definition of 'disclosable pecuniary interests'.

- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to Members;
- (v) any ceremonial honour given to Members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

## 12. Effect of Disclosable Pecuniary Interests on participation

### 12.1 You may not:-

- (a) if present at a meeting of the Authority or of any Committee, Sub-Committee, Joint Committee or Joint Sub-Committee of the Authority and
- (b) you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and
- (c) you are aware that sub-paragraph 12.1(b) is met:-
  - (i) participate, or participate further, in any discussion of the matter at the meeting, or
  - (ii) participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's Proper Officer;
- (d) exercise executive functions in relation to that business and
- (e) seek improperly to influence a decision about that business.

12.2 If a function of your Authority may be discharged by a Member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

12.3 If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your Authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely

to prejudice your judgement of the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:-

- (a) Disclose the existence and nature of the interest in accordance with paragraph 10.1 (but subject to paragraph 10.3).
- (b) Withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from your Authority's Proper Officer in a case where paragraph 12.3 applies immediately after making your representations or in any other case when the business is under consideration unless you have obtained a dispensation from your Authority's Proper Officer.

---

**PART 3 REGISTER OF MEMBERS INTERESTS****13. Registration of Members' Interests**

Subject to paragraph 14 you must, within 28 days of:-

- (a) this Code being adopted by or applied to your Authority; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Authority

register in your Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:-

- (i) Disclosable pecuniary interests<sup>4</sup> as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
  - (ii) Pecuniary interests referred to in paragraph 7 that you have.
- (c) Subject to paragraph 14 you must, within 28 days of becoming aware of any new disclosable pecuniary interest as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner or change to any disclosable pecuniary interest registered under paragraphs 13 (i) or (ii) above, register details of that interest or change by providing written notification to your Authority's Monitoring Officer.

**14. Sensitive Information**

- 14.1 Where you have a disclosable pecuniary interest referred to in paragraph 6, or pecuniary interest referred to in paragraph 7, and the nature of the interest is such that you and your Authority's Monitoring Officer considers that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Authority's register, then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 14.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 14.1 is no longer sensitive information, notify your Authority's Monitoring Officer.

---

<sup>4</sup>Regulations from the Secretary of State are currently awaited as to the definition of "pecuniary interests and disclosable pecuniary interests"

- 14.3 In this Code 'sensitive information' means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

**CODE OF CONDUCT**

**APPENDIX**

**THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011**

**SELFLESSNESS**

To serve only the public interest and never improperly confer an advantage or disadvantage on any person

**INTEGRITY**

Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

**OBJECTIVITY**

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

**ACCOUNTABILITY**

To 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 Office.

**OPENNESS**

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

**HONESTY**

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

**LEADERSHIP**

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