

CONSTITUTION COMMITTEE

THE LOCALISM ACT 2011 AND A CODE OF CONDUCT FOR MEMBERS – PROPOSED NEW ARRANGEMENTS

REPORT OF THE DIRECTOR OF LAW & ADMINISTRATION

Purpose of Report:

To seek approval for proposed new arrangements relating to the conduct of members and ancillary matters consequent upon the requirements of the Localism Act 2011.

Recommendations:

That Constitution Committee recommends -

- a) That the Council adopts one of the two draft Codes of Conduct for Members attached as appendices i and ii.
- b) That the Council adopts the draft procedure for investigating and determining allegations of member misconduct attached as appendix iv.
- c) That the Council agrees that the existing Standards and Audit Committees be abolished, with their functions and responsibilities being discharged by the establishment of a new Audit and Governance Committee, the draft terms of reference of which are attached as appendix vi.
- d) That the investigation and determination of allegations of member misconduct be the remit of a newly established Hearings Panel sub-committee of the new Audit and Governance Committee, with a politically balanced membership of 5 county councillors.
- e) That the Council appoints the members and Chair of the Audit and Governance Committee at the meeting of County Council on 21st November 2012.
- f) That the Council agrees the principle of appointing a pool of three Independent Persons to consult on allegations of member misconduct.

Appendices:

- i. Draft Code of Conduct based on the DCLG model
- ii. Alternative draft Code of Conduct based on the ACSeS model
- iii. Draft revised Register of Interests Form
- iv. Draft procedure for investigating and determining allegations of member misconduct
- v. Flowchart illustrating proposed allegations procedure
- vi. Draft terms of Reference for an Audit and Governance Committee

Background Documents:

Report to the Standards Committee (15th June 2012) and County Council (20th June 2012) entitled 'The Localism Act 2011 And The New Standards Regime Incorporating A Code Of Conduct For Members'

Monitoring Officer briefing note entitled 'The Localism Act 2011 and the New Standards Regime Incorporating a Code of Conduct for Members' as circulated to all County Councillors on 28th June 2012.

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1. Introduction and Background

- 1.1 The Localism Act 2011 and Regulations thereunder significantly amended the existing statutory arrangements governing the conduct of elected members and established new obligations on Councils and Councillors to continue to ensure that high standards of member and co-opted member conduct be maintained and demonstrated to the public. These obligations came into force on 1st July 2012 and are set out in broad terms within the Act; the specific details of how to meet them are largely left up to local discretion.
- 1.2 At the meeting of County Council on 20th June 2012 it was resolved:
 - a) To agree to an interim approach from 1 July 2012, which includes provision for the declaration and registration of disclosable pecuniary interests.
 - b) To appoint the current three independent members of the Standards Committee on a transitional basis to undertake the role of independent persons.
 - c) To request the Director of Law and Administration (as Monitoring Officer) negotiate with the other six primary councils within the county in respect of consistent future arrangements for the discharge of the standards functions established by the Localism Act 2011 within all seven councils.
 - d) To note that whatever the outcome of the negotiations with the six primary councils, the County Council will adopt new arrangements under the Localism Act 2011 in the September or October cycle of formal decision-making to replace the interim arrangements.
- 1.3 Within Gloucestershire a commitment has been made to pursuing countywide consistency in new standards arrangements where possible; and to facilitate this, the Council resolutions at the meeting on 20th June (as above) took into account provisions within the Localism Act to adopt transitional arrangements ready for 1st July while discussions across the county were conducted.

2. Purpose of Report

2.1 Following discussion between the county monitoring officers and research into the emerging new standards regimes of other councils, recommendations have been drawn up on how best the Council can meet the requirements of the Localism Act in the interests of good governance, accountability and transparency. The purpose of this report is to present recommendations for the kind attention and approval of the committee, for onward recommendation to full Council for approval on 21st November 2012 to fully meet the following Localism Act obligations:

- a) that councils introduce a code of conduct for councillors based on the seven 'Nolan' principles;
- b) that this code includes provisions for the registration and disclosure of pecuniary and non-pecuniary interests;
- c) that members register and disclose the pecuniary interests of themselves and their husband, wife, civil partner or any person they are living with as such, failure to do so without reasonable excuse being a criminal offence;
- d) that councils introduce suitable arrangements for investigating and determining allegations of member misconduct;
- e) that these arrangements include provision for the appointment of at least one independent person through a suitable selection process.

3. New Code of Conduct for Members

3.1 Councils have a general duty to promote and maintain high standards of member conduct. To support this, the Localism Act requires councils to introduce a code of member conduct consistent with the seven Nolan principles of: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. This code applies to members only when they are acting in their capacity as members.

3.2 As the Act is non-prescriptive in how codes of conduct should be drafted, the only requirement being that they meet the stipulation above, councils across the country have taken different approaches. Some have started from the basis of adapting their existing codes; and some have opted to base their provisions on one of the precedent/template codes produced by organisations such as the Local Government Association (LGA), Association of Council Secretaries and Solicitors (ACSeS) and the Department for Communities and Local Government (DCLG). This diversity of approach is reflected within the county of Gloucestershire, where the six district councils in the main have adopted different variations based on the ACSeS model, with two adapting existing codes.

3.3 Though different, all adhere to the principles of the Localism Act; and in the spirit of the broad statutory discretion for local adoption given by the Localism Act, two draft codes are here attached as appendices i and ii for members to consider, based on the DCLG and ACSeS models. As a matter of law, adoption of either by the Council on 21st November will not only meet the requirements of the Localism Act, but also will not preclude this Council from

continuing to pursue a countywide code of conduct in discussion with the districts, as the Act allows for its revision once adopted.

4. Registration of Disclosable Pecuniary Interests (DPIs) and Other Interests

- 4.1 The Localism Act requires councils to make provision for the registration and disclosure of DPIs and other interests. It will be the responsibility of the Monitoring Officer to maintain a public register of all such interests, but it is the individual responsibility of members themselves to actually register and disclose their interests, failure to do so without reasonable excuse being a criminal offence, conviction for which can result in a £5,000 fine and disqualification from standing for election for up to five years.
- 4.2 To assist members in discharging their duty to register and disclose, as well as meeting the Council's obligation to make provisions for this, either of the draft codes of conduct clearly states what is required of members by the Act and how best members can operate within these requirements. They make clear reference to: what constitutes DPIs and other interests; whose interests need to be recorded; what a sensitive interest could be and what to do if a member suspects they have one; and the timeframes within which disclosures and registrations must happen. To reflect cross-county consistency, on the recommendation of the Monitoring Officer, they also state that members must leave the room during a formal Council or committee meeting while a relevant interest is being debated or voted on.
- 4.3 The Council has also produced an updated register of interests form. This shares a notable consistency of approach to that of four of the six districts and has been successfully tested by new independent members of the Police and Crime Panel. It is attached as appendix iii for comment.

5. Investigating and Determining Allegations of Misconduct

Within the Localism Act there is a clear requirement for councils to put in place a suitable procedure for the investigation and determination of allegations of misconduct against members and co-opted members. In keeping with the Act's less directive approach than hitherto under former arrangements, the need for a standards committee to oversee any investigation has been abolished with no suggestion as to what should replace it, and the only stipulations the Act makes on how allegations should be handled is that a suitable independent person's view be sought in coming to any decision.

5.1 The Process

- 5.1.1 As far as possible, consistency of approach across the councils of the county is likely to be in the best interests of good local governance, affording as it would a degree of certainty, as well as less confusion, in the minds of elected councillors and members of the public. Within Gloucestershire, those districts with new procedures already in place have settled on a consistent *process* of investigating and determining allegations of member misconduct, with some

differences in who carries out certain functions at each stage. Presented as appendix iv for comment and recommendation to Council is a draft procedure for investigating and determining allegations of member misconduct. It is broadly consistent with the approach taken at district level. Crucially, it complies with the requirements of the letter and spirit of the Localism Act, permitting as it does clear opportunities for an independent person to be consulted.

- 5.1.2 It also seeks to deliver a process that is sensible, pragmatic and proportionate, the key features being that it: establishes discretion in determining whether or not to pursue a full misconduct investigation, by requiring those conducting an investigation to ask themselves preliminary questions designed to establish the seriousness of the alleged offence(s); gives clear guidance as to when in the process any potentially criminal conduct should be reported; and makes some limited provision for complainants to make representations for further consideration of decisions they do not agree with, allowing councils to respond to accusations that natural justice is being denied.

5.2 The Hearings Committee/Panel

- 5.2.1 As defined, the recommended process is one that has a substantial role for a hearings panel in the constitutional form of a sub-committee of the new Audit and Governance Committee. Under former arrangements, Standards Committee had overall responsibility and authority for conducting the regime of local determination of allegations of councillor misconduct, and this new proposal preserves that role in the formal member arena rather than devolving greater responsibility for the Monitoring Officer, as is the case with arrangements adopted elsewhere in the country and in Gloucestershire. Some councils have opted to combine the functions of their audit and standards committees and establish a new sub-committee responsible for member complaints; others have chosen to retain a standards committee and sub-committee to investigate complaints. Either approach would meet the requirements of the Localism Act, and both options are here presented for comment and approval.
- 5.2.2 On balance, it is recommended that the existing Standards and Audit Committees be combined into a new Audit and Governance Committee, which would establish one single committee as the repository of a complementary set of responsibilities in this important area of corporate governance. Draft Terms of Reference for this new committee are attached as appendix vi, and describe a politically proportional committee of 9 members. (As proposed this would amount to 6 Conservative, 2 Liberal Democrat, 1 other). It also includes reference to a Hearings Panel to investigate and determine allegations of member misconduct. The law requires that as a formal sub-committee, this Hearings Panel must also be politically proportionate and also include a role for an independent person. It is recommended that it be comprised of 5 members. An independent person will offer advice.

6. Independent Person(s)

- 6.1 The draft procedure outlined in appendix iv meets the Localism Act requirement that at least 1 independent person have a consulting role in the determining of allegations of member misconduct. The Act also requires that this role be advertised and that appointments will be made following formal application on the part of interested persons. While the transitional arrangements brought into place for 1st July allowed the Council to appoint the existing independent members of the Standards Committee to the role of independent persons for the time being, a procedure for selecting future independent persons still needs to be approved.
- 6.2 Discussions are ongoing as to whether or not it might be possible for the councils of the county to share a 'pool' of independent persons, an approach that has found favour elsewhere in the country.
- 6.3 For the moment, it is recommended that an interview process for selecting independent persons comprises a panel of the Monitoring Officer, Chairman of the Audit and Governance Committee and 2 other members. It is also recommended that there should be at least 3 independent persons appointed, as otherwise the duality of role of a single appointee possibly engaging both with those investigating misconduct allegations and the member being investigated, could compromise the integrity of the process.
- 6.4 If the establishment of the proposed Audit and Governance Committee is approved, it is recommended that at the meeting of County Council on 21st November, membership and the Chair of the new Committee be agreed, so that the process of appointing Independent Persons can begin without delay.

7. Summary

This report asks members to consider and support a set of recommendations as to how best the Council can meet the requirements within the Localism Act for a new standards regime for members, in the best interests of establishing public confidence, sound corporate governance, accountability for member conduct, and transparency of process and procedure, all meeting the rules of natural justice.