

FAREHAM

BOROUGH COUNCIL

Report to Audit and Governance Committee

Date **10 March 2014**

Report of: **Director of Regulatory and Democratic Services**

Subject: **REVIEW OF THE MEMBERS CODE OF CONDUCT**

SUMMARY

Members have been operating under the new standards arrangements since July 2012 when a new code and arrangements for standards were approved by Council at its meeting on 21 June 2012. During the first years of operation the arrangements have worked well in that they are less prescriptive than the previous arrangements and provided more opportunity for matters to be dealt with at an early stage if warranted. This report highlights the current arrangements and the work that has been undertaken by the Hampshire and Isle of Wight Local Authorities (HIOWLA) with the objective of developing a pan-Hampshire Code of Conduct for Members. The report also highlights a way forward for consideration by the Committee that takes account of the work undertaken by HIOWLA as part of developing a more consistent Code of Conduct for Members across Hampshire Authorities.

RECOMMENDATION

HIOWLA authorities have been requested to review and where necessary revise their Codes of Conduct for Members in order to develop a more generic and consistent Code of Conduct for Members. Given that a number of Fareham's members are also Hampshire County Council members, it is recommended that:

- a) Once Hampshire County Council have reviewed their Code of Conduct for Members that this be reported to the committee so that Fareham's code can be reviewed in light of this and the request from HIOWLA to ensure as far as possible the two are consistent and complementary; and,
- b) In the meantime the requirement for members to enter in the authority's register of interests the receipt of any gift or hospitality, where the Member estimates the value to be at least £50, within 28 days of receipt be incorporated into Fareham's existing Code of Conduct for Members.

INTRODUCTION

1. At the meeting of the Audit and Governance Committee on the 11 March 2013, the Committee considered a motion which was submitted to Council on 22 February 2013 by Councillor N R Gregory which had been referred to it for consideration. The motion related to the Code of Conduct for Members and the sanctions available for dealing with any breach of the code. In considering the matter, it was resolved that the motion was not supported but the Monitoring Officer bring a report back to the Committee in one year's time to give an update on how the current arrangements are working with possible recommendations for improvement.
2. The new arrangements for dealing with the misconduct of members has seen a significant move from a national system to a local one, with proportionate arrangements set locally and a focus on the more serious complaints.
3. There was also the introduction of the criminal law to some aspects of conduct, but at the same time a considerable watering down of many of the sanctions made available to Standards Committees in recent years.
4. The introduction of the new arrangements was hampered by the lateness of the detailed regulations covering the content of the Code of Conduct and the Disclosable Pecuniary Interests regime. There were also legal uncertainties, some now resolved, over the practical effect of some of the changes. Notwithstanding the challenges, the Council were able to put in place arrangements by the July 2012 deadline that met the requirements of the Localism Act.
5. Another significant change was the appointment of our two Independent Persons. They are new statutory appointees, recruited and appointed by the Council to have independent oversight over the way the Council deal with Member complaints and who are consulted at various stages in our procedures.
6. This report sets out the position in terms of the current arrangements at Fareham and the options that have been considered by the Hampshire and Isle of Wight Local Authorities (HIOWLGA) that have been considered in order to develop a pan- Hampshire Code of Conduct for Members.

Current Arrangements as a result of the Localism Act 2011

7. A report was presented to the meeting of Council on 21 June 2012 that explained the effect and implications of the Localism Act 2011. The Act changed the arrangements governing standards of members conduct and abolished the then current national standards regime that was in place governing the conduct of members.
8. However, section 27 of the Localism Act still placed a duty on the Council to promote and maintain high standards of conduct by both Members and Co-opted Members of the Council, and to adopt a Code of Conduct to deal with the conduct expected of Members and Co-opted Members when acting in an official capacity.

Members Code of Conduct

9. The current Code of Conduct as required by the Localism Act is consistent with the Seven Principles of Public Life, known as the Nolan Principles of: selflessness, integrity, objectivity, accountability, openness, honest and leadership.
10. The Code of Conduct also contains provision for the registration and disclosure of specified pecuniary interests, and interests other than pecuniary interests which the Council requires to be registered.

Members' Interests

11. The provisions in respect of the registration and disclosure of Members' Interests also changed and the Code of Conduct for Members reflected the new arrangements. Section 29 of the Localism Act required the Monitoring Officer to establish and maintain a Register of Members' and Co-opted Members' interests, to make the register available for inspection, and to publish it on the Council's website.
12. The Register had to include details of Disclosable Pecuniary Interests (DPIs), as defined in Regulations made by the Secretary of State, of themselves, their spouse or person they live with as husband and wife or civil partner. This was all done and a Register of Members' Interests is in place and this is published on the Council's website and Members update these as and when their interests change.
13. In addition, in order to promote good governance, and to minimise any allegations of bias in decision making, the provision in respect of the registration and disclosure of what, under the old Code of Conduct, would constitute a personal interest was retained. A personal interest currently arises where it relates to either a personal interest a Member must register, or to a personal interest not required to be registered, where the well-being or financial position of the Member, his family, or persons with whom the Member has a close association, is likely to be affected by the business more than the majority of inhabitants of any electoral wards of the Council, or inhabitants of the Council's area generally. It was considered appropriate that personal interests should continue to be registered and this was included within the Council's current Code of Conduct.

Arrangements for dealing with complaints

14. The Localism Act requires the Council to make 'arrangements' for dealing with complaints of breaches of the Code of Conduct for Members.
15. As a result the Council's Audit Committee was renamed the Audit and Governance Committee and is now made up of 7 Members and its terms of reference extended to deal with Standards issues as well as any alleged complaints about member conduct by way of a Standards Sub Committee.
16. The actual arrangements and procedure for dealing with complaints of breaches

of the Code of Conduct for Members were agreed by Council at its meeting on 21 June 2012 and these new arrangements and responsibilities came into effect on 1 July 2012. The Code of Conduct for Members and the procedure for dealing with complaints is published on the Council's website.

Independent Persons

17. Part of the arrangements that the Localism Act required was to appoint Independent Person(s) who would be used as a 'sounding board' when dealing with complaints about members conduct. The Independent Person **must** be consulted by the authority 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. They may also be consulted by the council at any stage in respect of a standards complaint. In addition the Independent Person could also be consulted by a member of the Council against who a complaint has been made.
18. The Council appointed 2 Independent Persons which mitigates against the risk of the Council being unable to fulfil its statutory duty should one of the Independent Persons be conflicted out or incapacitated. The two Independent Persons are David Basson and Mary Kilbride.

Complaints dealt with to date

19. All complaints are taken seriously and investigated as appropriate. In order to be considered under the formal complaints process complaints must be submitted in writing, must provide substantiated information, and should outline what form of resolution the complainant is seeking. When a complaint does not meet these criteria and does not reveal a potential breach of the Members' Code of Conduct it is treated as a 'general enquiry'. This means that the Monitoring Officer responds to the complainant explaining why the matters complained of do not constitute a potential breach of the Members' Code of Conduct.
20. When a written complaint is submitted which provides the relevant information, the Monitoring Officer will consider the complaint against an assessment criteria and make a decision as to whether it will be treated as a valid complaint or not.
21. For the period 1 April 2012 to 31 March 2013, the Monitoring Officer received 10 separate complaints about Councillors, 7 of which were treated as formal complaints and assessed against the criteria set out in the complaints procedure. All these were resolved at an early stage of the complaints procedure meaning that there have been no determinations or findings of a failure to comply with the Code of Conduct that needed to be referred following investigation by the Monitoring Officer to the Standards Sub Committee.
22. For the period 1 April 2013 to date (12 February 2014) 6 separate complaints about Councillors were received, 3 of which were treated as formal complaints, one being resolved as part of the complaints procedure and no determinations or findings of a failure to comply with the Code of Conduct.

Hampshire Wide Code

23. When Fareham's current Code of Conduct for Members was approved in June 2011, Members also resolved that account would be taken of any Hampshire wide generic Code as part of any future review of the Council's Code of Conduct for Members.
24. This is particularly important where Members are 'double' or even 'triple-hatted' and have to work to different codes. This obviously causes confusion if the ethical standards to which they must adhere vary depending on the capacity in which they are acting, or which authority's meeting they are attending. It was felt that this could increase the risk of inadvertent failure to comply.
25. HIOWLA authorities also expressed support for the development of a pan-Hampshire code of conduct and Hampshire County Council's Head of Legal Services has undertaken work to explore co-operation and collaboration between the HIOWLA authorities to produce a joint code to implement the requirements of the Localism Act on Members' conduct.
26. At the meeting of the Hampshire and Isle of Wight Local Authorities (HIOWLGA) on 22 November 2013 consideration was given to the matter of a pan-Hampshire Code of Conduct for members. The options that were considered are attached as Appendix A.
27. HIOWLA considers that it is in the interests of Members of its constituent authorities, and the public served by those authorities, to adopt a consistent approach to the registration and disclosure of Members' pecuniary and non-pecuniary interests that are relevant to the business of the authorities. It is considered such an approach will reduce confusion as to when relevant interests should be disclosed, and minimise the risk of inadvertent failure to comply with relevant requirements.
28. After considering the matter Option 2 was identified as the preferred way forward as this achieves consistency in the registration and disclosure of DPIs, other pecuniary and non-pecuniary interests
29. It was felt that this strikes a reasonable balance between achieving consistency in the disclosure of interests, while retaining flexibility for some local variation in the setting of standards for other aspects of conduct and behaviour. Further, this would not preclude the adoption of consistent standards for such other aspects of conduct and behaviour at some future stage, should this be desired.
30. In terms of Option 2 a suitable draft document is attached at Appendix B that could be incorporated into our code for adoption.
31. HIOWLA cannot resolve to adopt a Code of Conduct on behalf of any constituent authority, or to unilaterally amend any authority's existing Code or Standing Orders. However, HIOWLA can agree to ask each constituent local authority to review and, where necessary, consider revising its existing Code and Standing Orders with a view to ensuring that these include the core provision set out in Appendix B.

32. As a result the Chairman of HIOWLGA has written to all Leaders and Chief Executive of HIOWLGA (see Appendix C) requesting that all HIOWLGA authorities review and, where necessary revise their existing Code and Standing Orders with a view to ensuring that, in addition to the mandatory requirements of the Localism Act they also include the core provisions set out in Appendix B to this report.
33. Authorities may, of course, adopt such further provision in their Code of Conduct or Standing Orders as they consider appropriate, but are requested to ensure that no such provision is inconsistent with the core provisions set out in Appendix B.

Sanctions

34. The Act does not replicate the previous array of sanctions and does not give the Council or its Committees or Officers any powers to impose sanctions such as suspension or requirements for training or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited to censure and such other action which are permitted under general local government law.
35. Under the previous arrangements local authorities and an independent tribunal had the power to suspend members for varying periods of time as a sanction against poor behaviour.
36. The only sanctions that are available now, apart from the use of a political parties internal discipline procedures are censure or a criminal offence of failing to declare or register interests relating to disclosable pecuniary interests. The latter route will rarely be used.

The Way Forward

37. Fareham's code generally meets the requirements of option 2 that was identified by HIOWLA as the preferred option. The main difference however is that in Fareham's code there is no requirement that relates to gifts and hospitality and in certain circumstances where a member has a personal interest, that is also a pecuniary interest, they are allowed to attend a meeting to make representations and then must leave the room where the meeting is being held while any discussion or voting takes place.
38. The wording of our current Code of Conduct for Members could be further refined and to this effect bearing in mind that a number of Fareham's Councillors are Hampshire County Councillors it would be beneficial that we ensure that the two codes are complementary.
39. As such the Monitoring Officer has been liaising with the Head of Legal Services and the Monitoring Officer of Hampshire County Council to ascertain at what stage they are in the review of their Code of Conduct for Members in light of the request from HIOWLA. It is therefore proposed that once Hampshire County Council have undertaken a review of their code to reflect option 2, that this is then reported to the Committee to ensure the content and wording of Fareham's Code is as far as possible consistent.

Conclusion

40. Given that a number of Fareham members are Hampshire County Council members and as such have to take account of two codes, it is recommended that once Hampshire County Council have reviewed their Code of Conduct for Members that this be reported to the committee so that Fareham's code can be reviewed in light of this and the request from HIOWLA to ensure as far as possible the two are consistent and complimentary.
41. Under the Localism Act there is no requirement to register gifts and hospitality but for transparency purposes it is also recommended that the requirement relating to Gifts and Hospitality is also adopted and incorporated into Fareham's Code of Conduct for Members in the meantime.

Background Papers:

Reference Papers:

Report to Council, 26 April 2012, The Localism Act and the new Standards Regime
Report to Council, 21 June 2012, Standards Arrangements
Report to HIOWLA, 22 November 2013, Localism Act- Options for a Pan-Hampshire Members` Code of Conduct

Enquiries:

For further information on this report please contact Garry White. (Ext 4395)

Options that were considered by the Hampshire and Isle of Wight Local Authorities (HIOWLGA) on 22 November 2013

Option 1 – Consistent Approach to Disclosable Pecuniary Interests

3.1 At the HIOWLA meeting on 22 June 2012, the Regulations on disclosable pecuniary interests (“DPIs”) had only recently been published, and had yet to come into force.¹ These are now in place and provide a basic level of commonality across all of the authorities as to the requirements upon Members for the registration and disclosure of pecuniary interests. The first option therefore involves a view that, in the light of experience in practice, this now secures a sufficient level of consistency and that no further provision is required.

3.2 The advantages of this option are:

- It strikes a balance between consistency in the key area of registration and disclosure of significant pecuniary interests, while recognising that authorities have discretion to adopt additional provisions where they consider this appropriate to local needs
- It is easy to implement, representing the status quo

3.3 The disadvantage of this option is:

- The ability for authorities to adopt additional provisions in their codes enables further requirements to be adopted on the registration and disclosure of pecuniary interests other than DPIs (e.g. gifts and hospitality), and non-pecuniary interests. This may still lead to confusion for multi-hatted members therefore, who would still need to adhere to slightly different rules on registering and disclosing interests

4. Option 2 – Consistent Approach to Pecuniary and Non-Pecuniary Interests other than DPIs (“Personal Interests”)

4.1 This option goes one step further than Option 1 and would involve all authorities adopting a common set of requirements concerning registration and disclosure of those pecuniary interests that do not meet the description of a DPI, and non-pecuniary interests. Further, there could be consistency as to when a Member, who has a DPI or other interest in a matter being considered at a meeting, is required to leave the meeting room for that item.

4.2 Research suggests that a common approach may be achievable here:

¹ The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which came into force on 1 July 2012

- 4.3 Personal Interests: A number of the Hiowla authorities already require there to be at least some registration and/or disclosure of personal interests. The Localism Act reduced the scope of interests legally required to be registered and disclosed, leaving the making of additional provision to local discretion. There is a feeling that some disclosure of personal interests remains appropriate in the handling of certain potentially sensitive types of business (e.g. planning applications, the award of grants and contracts), where reliance solely on the rules relating to DPIs would not afford a sufficient level of transparency.
- 4.4 A number of authorities regard a “personal interest” as arising in an item of business where it relates to or is likely to affect any of the following bodies of which the Member is a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 4.5 Similarly, a number of authorities provide that a “personal interest” will also arise where a decision on an item of business might reasonably be regarded as affecting the well being or financial position of the Member, a member of the Member’s family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority’s area.
- 4.6 Based on the current range of approaches, a possible basis for a common, proportionate approach would be a requirement to disclose a personal interest orally at a meeting, where it is relevant to an item of business being considered at that meeting. There would be no requirement to enter the interest in the published register of interests, though the oral disclosure at a meeting would be recorded in the minutes of that meeting. Once the interest has been disclosed, there would be no requirement for the Member to leave the room, and the Member would be able to participate in discussion and vote on the matter. There would be no requirement to include the interest in the register of interests which is published on the web.
- 4.7 Although many of the Hiowla authorities accept the principle that there should be some registration and/or disclosure of personal interests, the detailed provisions adopted by the authorities vary. Acceptance of a need for change on the part of some authorities would be required, as the price to be paid for achieving a common Hiowla-wide approach.
- 4.8 Gifts and Hospitality: A number of authorities have adopted a requirement to register the receipt of gifts or hospitality. The general threshold of value for registration varies, between £25 and £50. It may be possible to reach agreement in principle that such a requirement should be universally adopted, with an agreed value, say £50.
- 4.9 Exclusion from the Room where a Member has a DPI: In general, authorities require through their standing orders that a Member who holds a DPI in a matter being considered at a meeting should leave the room while the discussion and vote on that item take place.
- 4.10 The advantage of this Option 2 would be:
- All authorities would operate consistent provisions regarding all aspects of the registration and disclosure of interests, reducing risk of confusion amongst

Members, and of inadvertent failure to comply with the relevant authority's code

4.11 The disadvantage of this option would be:

- It still does not address the issue of consistency in requirements concerning aspects of conduct other than registration and disclosure of interests

5 **Option 3 – Consistent Approach to DPI's, other Pecuniary and Non-Pecuniary Interests, and other Aspects of Conduct**

5.1 This Option involves going one step further than Option 2 by ensuring consistency in provision regarding aspects of conduct other than registration and disclosure of interests. While the precise wording may differ slightly from one authority's code to another, many currently include provision in areas such as the following:

- Treating others with respect
- Maintaining confidentiality
- Observing requirements of equalities legislation
- Upholding, and not compromising, the impartiality of officers
- Not using position as a Member to secure an advantage
- Using resources of the authority for authorised purposes, and not for political purposes

5.2 There are two ways in which greater consistency could be achieved.

5.3 **Option 3A** would involve agreeing the principles (such as those listed in para 5.1 above) which should be covered by each authority's Code, yet leave it at each authority's discretion to settle upon its own precise wording. **Option 3B** would involve agreeing the actual wording for all authorities to adopt.

5.4 The advantage of Option 3A would be that:

- There is consistency in the principles of proper conduct that members are required to observe
- There is discretion for authorities as to the style in which the requirements are expressed
- It may better facilitate agreement and adoption, as it would not be necessary to resolve issues where there are different views on detailed drafting

5.5 The disadvantage of Option 3A would be that:

- There is still some minor inconsistency in the particular requirements Members are required to observe

5.6 The advantage of Option 3B would be that:

- It achieves complete consistency across all authorities on not only the principles, but the precise details, of the requirements placed upon Members

5.7 The disadvantage of Option 3B would be that:

- It may be viewed as too prescriptive and not recognising a role for local variation to meet local needs
- It may be difficult to reach agreement.

Core Provision to be made in the Codes of Conduct and Standing Orders of Hampshire and Isle of Wight Local Authorities (HLOWLA) to achieve consistency of approach to Member Conduct

Summary

HLOWLA considers that it is in the interests of Members of its constituent authorities, and the public served by those authorities, to adopt a consistent approach to the registration and disclosure of Members' pecuniary and non-pecuniary interests that are relevant to the business of the authorities. It is considered such an approach will reduce confusion as to when relevant interests should be disclosed, and minimise the risk of inadvertent failure to comply with relevant requirements.

It has therefore been agreed to invite each constituent authority to review its Code of Conduct for Members and Standing Orders and, where necessary, to consider revising these to ensure that, in addition to the mandatory requirements of the Localism Act, they include the core provisions set out below.

Authorities may of course adopt such further provision in their Code of Conduct or Standing Orders as they consider appropriate, but are requested to ensure that no such provision is inconsistent with the core provisions set out below.

The term "Member" includes member and co-opted member, throughout.

Code of Conduct

1. Personal Interests

- 1.1. A Member has a "personal interest" in an item of business where it relates to or is likely to affect any of the following bodies of which they are a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.
- 1.2. A Member also has a "personal interest" in an item of business where a decision in relation to it might reasonably be regarded as affecting the well being or financial position of the Member, a member of the Member's family or person with whom they have a close association, more than other council tax payers, ratepayers or inhabitants of the authority's area.
- 1.3. A Member shall disclose a "personal interest" at a meeting of the authority, committee or sub-committee, where the Member considers that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting.
- 1.4. Disclosure of a personal interest does not affect the ability of the Member to participate in discussion or vote on the relevant item, provided it is not also a

disclosable pecuniary interest.

2. Gifts and Hospitality

- 2.1. A Member shall enter in the authority's register of interests the receipt of any gift or hospitality, where the Member estimates the value to be at least £50, within 28 days of receipt.

Standing Orders

3. Exclusion from Meeting Where Member Holds a Disclosable Pecuniary Interest

- 3.1. The authority's Standing Orders shall provide for the exclusion of a Member of the authority from a meeting while any discussion or vote takes place on a matter in which the Member has a disclosable pecuniary interest, unless a dispensation has been granted.

**HAMPSHIRE AND ISLE OF WIGHT
LOCAL GOVERNMENT ASSOCIATION**



Councillor Seán Woodward
Chairman

**Civic Offices
Leigh Road
Eastleigh
SO50 9YN**

Tel: 023 8068 8431 *Fax:* 023 8068 8030
E-Mail: hiow@eastleigh.gov.uk
Website: www.hiow.gov.uk/
Britdoc: DX 122381 EASTLEIGH 2

My ref: SW/mw

16 January 2014

All Leaders of HIOWLGA
cc All Chief Executives of HIOWLGA

Dear Councillor

Pan-Hampshire Code of Conduct

At the meeting of Hampshire and Isle of Wight Local Authorities (HIOWLGA) on 22 November 2013, consideration was given to the matter of a Pan-Hampshire Code of Conduct for Members. A copy of the report considered at the meeting is attached.

It was considered to be in the interests of Members of our constituent authorities (a number of whom are Members of more than one authority), and the public that those authorities serve, to adopt a consistent approach to the registration and disclosure of Members' pecuniary and non-pecuniary interests. Such an approach will reduce confusion as to when relevant interests should be disclosed, and minimise the risk of inadvertent failure to comply with relevant requirements.

After considering the options set out in the report, Option 2 was identified as the preferred way forward. Under the Localism Act, it is for each local authority to adopt and, where necessary, revise, its Code of Conduct. It was agreed therefore that all HIOWLGA authorities would be asked to review and, where necessary, revise their existing Code and Standing Orders, with a view to ensuring that these include the core provisions set out in the appendix to the report.

I would be grateful if you could make the necessary arrangements for this review to take place within your own authority. While the outcome of that consideration is a matter for your authority, I would invite you to have regard to the value that will be added by the arrangements of all HIOWLGA authorities, governing the disclosure of Member interests, sharing the same essential characteristics.

Yours faithfully

Councillor Seán Woodward
CHAIRMAN