

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 5th July 2012
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Localism Act 2011: Proposed Amendment to Audit and Governance Committee's Terms of Reference and the Council's Procedure Rules

1.0 Report Summary

- 1.1 The report asks the Constitution Committee to approve and recommend to full Council the adoption of additional terms of reference for the Audit and Governance Committee to enable responsibility for ETHICAL standards and conduct issues to be transferred from the Standards Committee in line with the requirements of the Localism Act 2011.
- 1.2 The Committee is also invited to recommend to Council an amendment to the Council's Constitution which would require a Member to withdraw from a meeting having declared a pecuniary interest.

2.0 Recommendation

- 2.1 That the terms of reference set out in the Appendix to the report be recommended for formal adoption by full Council on 19th July 2012, the sub-committee and panels to operate under the procedures approved and adopted by Council.
- 2.2 Council be recommended to approve that the Council Procedure Rules be amended to require a Member who declares a pecuniary interest in an item of business to withdraw from the meeting at the appropriate juncture.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to have in place appropriate procedures to deal with any breaches of the new Code of Conduct with effect from July 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

- 6.1 Strong Ethical Governance, including a robust and transparent policy for investigation of alleged breaches of the Code of Conduct, is critical to the corporate governance of the Council and also underpins the Council's decision making processes as a whole.

7.0 Financial Implications

- 7.1 Costs of investigating breaches are dependent upon the number of complaints received which are referred for investigation, however at the moment it is anticipated that costs will be met from existing resources.

8.0 Legal Implications

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 1 July 2012. The Act requires that the Council not only adopts a Code of Conduct but has in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct.

9.0 Risk Management

- 9.1 If the authority fails to adopt the new arrangements, then there are risks to the Council not only from a reputational management viewpoint but also to the integrity of the Council's Corporate Governance and decision making processes as a whole.

10.0 Background

- 10.1 Under the Localism Act 2011, the Council has a statutory duty to promote and maintain high standards of conduct by both its elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct which is expected of Members whenever they act in their capacity as an elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member is in breach of the new Code of Conduct.
- 10.2 The Borough Council is also responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.
- 10.3 Local authorities are no longer required, under the Act, to appoint a Standards Committee to deal with matters concerning standards and

conduct issues. Following consideration of the matter by the Standards Committee, Council agreed at its meeting on 19 May 2012 that responsibility for standards and conduct should be transferred from the Standards Committee to the Audit and Governance Committee.

10.4 The decision of Council (as extracted) was as follows: That

i) the Audit and Governance Committee establish, on an ad-hoc basis, a sub-committee with delegated powers to deal with standards issues, with effect from the next meeting of the Council in July 2012; and

ii) the draft terms of reference at Appendix 9i) of the report submitted be adopted in respect of the Audit and Governance sub-committee.

11.0 Terms of Reference

11.1 The Regulations, which underpin much of the new procedure, had not been published when the initial report was submitted to Council, resulting in the terms of reference being in draft form only. Since that time, the Regulations have come forward, which has enabled the Standards Committee, at its meeting on 18 June 2012, to finalise its recommendations on the future of the standards regime. The draft terms of reference submitted to Council in May have therefore been amended to reflect the current position.

11.2 The Committee is invited to approve the Terms of Reference set out in the Appendix to the report in respect of the Audit and Governance Committee and its three sub-committees i.e.

- the Initial Assessment Panel
- the Local Resolution Panel
- the Hearing sub-committee

for formal adoption by Council. The procedures under which the sub-committees will operate will be the subject of a separate report to Council.

12.0 Withdrawal from Meetings

12.1 There is no requirement in the Act for a Member to withdraw from a meeting during an item of business where they have a pecuniary interest in that item or have disclosed such an interest although participation in the discussion or voting will be a criminal offence. Under Section 31(10) of the Act, a Council may agree to provide under the rules of conduct in the Constitution that Members should be excluded from meetings where they have a disclosable pecuniary interest. This would prevent any perception that Members were able to influence meetings through their continued presence.

- 12.2 Having considered the matter at its meeting on 18 June 2012, the Standards Committee was supportive of this approach and agreed that Council be asked to support an amendment to the Constitution to this end.

13.0 Access to Information

- 13.1 The background papers relating to this report can be inspected by contacting the report writer:

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