

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting: 27th September 2012
Report of: Borough Solicitor
Subject/Title: Standards Issues and Planning Protocol

1.0 Report Summary

- 1.1 This report advises Members on a number of issues in relation to the new Code of Conduct adopted by Cheshire East Council in July 2012, including the possibility of an Appeals Procedure, the need to review the Council's existing Planning Protocol and the necessity to have in place a number of dispensations under the Code.

2.0 Recommendations

That the Committee

- (1) approve the proposed amendments to the Council's Planning Protocol and recommend its adoption by full Council;
- (2) determine the appropriate Procedure for an Appeal as set out at paragraph 11.0 of the report; and
- (3) approve the general dispensations for all Members of Cheshire East Council as set out at paragraph 12.3 of the report.

3.0 Reasons for Recommendations

- 3.1 In order to ensure that the Council's procedures following the adoption of the new Member Code of Conduct in July 2012 are robust and comply with best practice. It is also essential that the Council's existing practice and procedures are not inconsistent with any of the provisions in the new Code.

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 clear policies and protocols supporting and underpinning the Code of Conduct, are critical for the corporate governance of the Council and for public confidence in the Council's decision making processes.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 Costs in relation to any Appeal Process are dependent upon the number of complaints received, however at the moment it is anticipated that these costs and for the other aspects mentioned in the report will be met from existing resources.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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 were brought into effect from 01 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. The Borough Council remains responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.

9.0 Risk Management

- 9.1 The Council must have robust processes in place both from a reputational management viewpoint and to safeguard the integrity of the Councils Corporate Governance and Decision making processes as whole.

10.0 Background and Options

- 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 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 At its meeting on 19 July 2012 Full Council approved the adoption of a new Code of Conduct for Elected Members of Cheshire East Council together with a procedure relating to the investigation of complaints under the new Code. It was further agreed that a right of appeal should be built into the process for the subject member following the decision of the Standards Hearing sub-committee that a Member has been in breach of the Code of Conduct.

11.0 Right of Appeal

- 11.1 The procedure for the determination and investigation of complaints is set out in the attached flow chart at Appendix 1 and under the Procedure at Appendix 2 of the report. The original intention was that there would be no appeal at any point in the procedure for complaints for either the subject member or the complainant in order to facilitate a more light touch and streamlined approach. Members have however now agreed that it is appropriate to incorporate the right of appeal for the subject member from the decision of the Standards Hearing sub-committee following an external investigation and Hearing into a complaint under the Member Code of Conduct.
- 11.2 In accordance with the Council's own assessment criteria only those matters considered to be serious allegations will be referred for formal investigation by an external investigator. In the majority of cases the investigator will be expected to complete his investigation and produce a written report within 8 weeks of the referral. If the report concludes that there has been evidence of failure to comply with the provisions of the Code of Conduct then the matter will be referred to the Standards Hearing sub-committee who will conduct a Hearing to determine if the subject member has failed to comply with the Code and, if so, what sanction is appropriate. The matter will be considered afresh having regard to the investigator's findings and all relevant evidence presented by the complainant and subject member. As required by the legislation the Independent Person will be present at the Hearing and will be consulted and his/her views taken into account before any decision is reached.

11.3 Appeal Hearing - format

An Appeal could either be by way of a further oral hearing of the relevant issues or alternatively could be by way of written representations from all parties. During the consultation in relation to the initial procedure to be adopted Members from all parties tended, on balance, not to favour the idea of written representations and it is therefore suggested that a further oral Appeal Hearing would be more appropriate.

11.4 Composition of Appeal Body

There are a number of options in relation to the composition of the Appeal Body itself:-

Audit and Governance Members – The Appeal Body could comprise 3 different Members from the Audit and Governance pool of 15 Members sitting with an Independent Person. Neither the Members nor the Independent Person should have previously been involved in the particular case. This has merits since these will be Members who have had training in the Code and the procedure for Appeals and will therefore have the requisite expertise and experience.

Independent Persons - The Council has appointed 4 Independent Persons who will be consulted at the Initial Assessment Stage and also at the Hearing

sub-committee prior to any formal decision being reached. The subject member has also the opportunity to consult an Independent Person at any stage in the investigative process prior to the final determination. It would be an option to set up an appeal panel consisting of those Independent Persons who have not previously been involved in the matter to objectively determine the outcome.

Fire Authority - It may be possible to establish arrangements with the Cheshire Fire Authority to hear any Appeals. The panel would be ring fenced to those Fire Authority Members who were not Cheshire East Council Members. This would have the advantage of ensuring that any Appeal would be external to the Authority and therefore considered objectively but by elected Members with a general understanding of the requirements of the Code, although the Cheshire East Code might vary slightly from others in the locality. An informal approach has been made to the Fire Authority to explore this option.

11.5 Timescales and Sanctions

It is suggested that any Appeal by the subject member must be lodged within 14 days of the decision of the Hearings sub committee and that an Appeal Panel will be convened within 21 days. Any appeal would be by way of a complete re hearing of the issues and would not be confined to new evidence or only on specified grounds. It is proposed that any appeal panel would be able to dismiss or uphold the Appeal and reconsider the range of sanctions available to the original Hearing sub-committee

12.0 Dispensations

12.1 The Localism Act prevents Members from participating in any business of the Council where they have a Disclosable Pecuniary Interest unless they have sought a dispensation under Section 33 of the Act. Applications must be made in writing and dispensations may be sought for a period of up to four years. Dispensations may be sought on the following grounds:

- That so many Members of the decision making body have a disclosable pecuniary interest in a matter that the business of the meeting would be impeded
- Without a dispensation the representation of different political groups on the body would be so upset as to alter the outcome of any vote
- The dispensation is in the interests of persons living in the area
- No Member of Cabinet would be able to participate on the matter without a dispensation
- It is otherwise appropriate to grant a dispensation

12.2 Under the former Model Code of Conduct Members were granted general dispensations in relation to a number of matters:

- Housing, where the Member was a tenant of the authority providing the matter did not relate particularly to the Members own tenancy or lease
- School meals or school transport or travelling expenses where they were a parent or guardian of a child in full time education or a parent governor unless the matter related specifically to the school the child attended
- Statutory sick pay under Part X1 of the Social Security Contributions and Benefits Act 1992 where they were in receipt of or entitled to receive such pay
- An allowance, payment or indemnity given to Members
- Any ceremonial honour given to Members
- Setting Council tax or a precept under the Local Government Finance Act 1992

12.3 At the full Council meeting of the 19 July 2012 the Terms of Reference of the Audit and Governance Committee were amended to include “ *Granting Dispensations under the provisions of the Localism Act 2011 to enable a Member or co opted Member to participate in the meeting of an Authority* “ Past experience has been that applications for Dispensation by individual Members have been infrequent however given the fact that there are now no general dispensations in place it is recommended that Members approve the following general dispensations to speak and vote on the following items to all Cheshire East Council Members and co opted Members for a period of four years:

- Any allowance, payment or indemnity given to Members
- Any Ceremonial Honours given to Members
- Statutory sick pay under Part X1 of the Social Security Contributions and Benefits Act 1992 where they were in receipt of or entitled to receive such pay
- Setting the Council Tax or a precept under the Local Government and Finance Act 1992 (or any subsequent legislation)
- Setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (Including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation)
- School Meals or School Transport or Travelling expenses where the Member is a parent / guardian of a child in full time education or a parent

governor (unless the matter relates specifically to the school the child attends)

13.0 Planning Protocol

- 13.1 Members will be aware that the Council has approved a Planning Protocol which supplements the Member Code of Conduct and sets out guidance and best practice in terms of dealing with Planning issues both as a Member of the Strategic Planning Board and Northern and Southern Planning Committees and as a Ward Member. The Protocol needs to be updated to bring the guidance in line with the new Code of Conduct and to incorporate the provisions in relation to pre-determination as enacted earlier in the year under the Localism Act.
- 13.2 The amended Protocol is set out at Appendix 3. It has been considered by the Strategic Planning Board at its meeting on 12th September 2012 and the Constitution Committee on 20th September 2012. The minute of the Strategic Planning Board is attached at Appendix 4. The comments of the Constitution Committee will be reported at the meeting. Members are requested to recommend to Council the adoption of the amended Planning Protocol.

14.0 Access to Information

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

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