

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 18 June 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Localism Act 2011 – New Code of Conduct

1.0 Report Summary

- 1.1 The report asks Members to approve and recommend to Full Council the adoption of a new Code of Conduct as required by the provisions of the Localism Act 2011.

2.0 Decision Requested

- 2.1 That subject to consideration of those issues raised in paragraph 12, the draft Code of Conduct at Appendix 4 of the report be recommended for adoption by the Council on 19 July 2012.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to adopt a Code of Conduct and to have appropriate procedures in place to deal with any breaches 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 The Act places a statutory duty upon the Council to promote and maintain high standards of conduct amongst its own elected Members and any co-opted Members. Strong ethical governance is critical to the corporate governance of the Authority and also supports the Council's decision making processes across the organisation.

7.0 Financial Implications

- 7.1 Final cost of implementation of the new legislation will depend on the local arrangements approved by the Council. However it should be noted that the Act intended that the new procedure should be cheaper and more effective. Accordingly it is anticipated that costs will be met from existing resources.

8.0 Legal Implications

- 8.1 The Localism Act 2011 was enacted in November 2011 but its implementation is being phased in. The provisions in relation to the replacement of the current Standards Regime are due to be brought in to force with effect from 01 July 2012. Draft regulations are now available which define the new “Disclosable Pecuniary Interests” which in future Members will be expected to register.

9.0 Risk Management

- 9.1 It is important for the corporate governance of the Council that it expects the highest standards of conduct from Elected Members. If the Council fails to adopt a Code of Conduct which is fit for purpose then there are risks to the Council from a reputational management viewpoint and also to the integrity of the Council's corporate governance and decision making process.

10.0 Background

- 10.1 The Localism Act 2011 was enacted on 15 November 2011. Under the Act the Council has a statutory duty to promote and maintain high standards of conduct by both its Elected Members and co-opted Members. All Town and Parish Councils within the area are under the same duty for their Town or Parish Members.
- 10.2 The Nationally prescribed Model Code of Conduct for Members is abolished however, Cheshire East Council itself and all Town and Parish Councils within the Borough must adopt a Code of Conduct which sets out the conduct expected of Members when acting in their capacity as an Elected Member.
- 10.3 Any Local Code must be consistent with the Nolan principles of
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

- 10.4 Authorities have been waiting for the regulations to be made by the Secretary of State which would define the new “Disclosable Pecuniary Interests”. Failure to register or disclose such interests will become a criminal offence. Once this category of interest is known the Council needs to consider what other pecuniary interests and / or non pecuniary interests they require Members to register and disclose. The register can then be finalised and any relevant provision in the Local Code confirmed.
- 10.5 On 16 May 2012 Annual Council agreed that the current Code of Conduct for Members would continue on an interim basis until the new Code is adopted under the Act. This transitional arrangement was agreed as the next Full Council meeting is scheduled on 19 July shortly after the Act’s anticipated implementation date of 1 July 2012.

11.0 Draft Code of Conduct

- 11.1 At the previous meeting of the Issues and Ideas Working Group on 14 May 2012 Members considered the two documents produced by the Department of Communities and Local Government and the Local Government Association. In addition on 17 May 2012 the National Association of Local Council’s (NALC) issued a template Code for Parish Councils. NALC is recommending that Parish Councils do not adopt the LGA Code. Copies of the various documents are attached as follows:
- illustrative text produced by DCLG (Appendix 1)
 - the Model Code of Conduct produced by the LGA (Appendix 2)
 - the NALC draft for Town and Parish Councils (Appendix 3)
- 11.2 Members will be aware that work has been ongoing to draft a new standard Code of Conduct with a view to it being adopted across the Cheshire Authorities to include Town and Parish Councils and the Fire Authority. This draft is attached at Appendix 4 and has been written to:
- Be consistent with the Nolan principles and develop these into Member obligations
 - Balance “light touch regulation” with some clearer guidance to Members as to what they may or may not do
 - Include the obligations set out in the CLG text
 - reflect an initial draft Code produced by the Cheshire Fire Authority based on the current 2007 Model Code of Conduct and the relevant Standards for England’s guidance
 - Include those behaviours that Members should seek to uphold as set out in the LGA template.
- 11.3 At the time of writing the report the regulations on “Disclosable Pecuniary Interests” are issued only in draft form but have been included as an appendix (5). This may require further amendment.

12.0 Issues to consider

- 12.1 In order to reflect requirements within the current Code of Conduct “confidential information” is referred to at paragraph 5 (openness paragraph) and a supplementary paragraph 7 “respect for others” has been included. Both these items are seen as important issues to capture within any Code which the Council could be recommended to adopt.
- 12.2 Paragraph 5 of the Council’s current Code of Conduct provides that Members must not bring their Office or the Authority into disrepute while acting in their official capacity. None of the draft Codes refer to the topic of “disrepute” and experience suggests that complaints under this heading have often been based upon wider dissatisfaction about a Council decision or action rather than necessarily specific allegations about the behaviour of a Member. This requirement has not been included in the current Cheshire Code.
- 12.3 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 the 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. Members may wish to consider whether this is a recommendation they would wish to make.
- 12.4 The rules of conduct in the Constitution (Standing Orders) could also require Members to disclose registered interests at meetings as this is not required in all circumstances under the Localism Act. If this was the case then these requirements should be referred to in the Local Code.
- 12.5 There is also no requirement in the Act for Members to keep their Register of Members Interests up to date. At present Members must notify changes to their Register of Interests within 28 days. Again this could be included as a requirement in Standing Orders.
- 12.6 The draft regulations do not require Members to disclose any gifts or hospitality. This was a requirement of previous codes and it is recommended that this provision should be in any new code. Accordingly Paragraph 9 of the Local Code states that members should declare within 28 days any gifts or hospitality received with a value in excess of £100.
- 12.7 Subject to consideration of these issues and to receipt of the relevant regulations as referred to above, Members are requested to recommend to Full Council that the Code of Conduct at Appendix 4 of the report is recommended for adoption by Full Council.

13.0 Access to Information

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

Name: Caroline Elwood
Designation: Borough Solicitor
Tel No: 01270 685882
Email: caroline.elwood@cheshireeast.gov.uk