

CHESHIRE EAST COUNCIL

REPORT TO: COUNCIL

Date of Meeting: 19 July 2012

Report of: Borough Solicitor / Monitoring Officer

Subject/Title: Localism Act - Code of Conduct

1.0 Report Summary

- 1.1 At their meeting on 18 June 2012, Members of the Standards Committee considered two reports setting out the detailed requirements of the Localism Act 2011 to have a Member Code of Conduct together with a process for the investigation of complaints. This report updates Full Council following the meeting and makes a number of recommendations to adopt the revised documents to come into force with immediate effect. A separate report makes recommendations as to the changes to be made to the terms of reference of the Audit and Governance Committee.

2.0 Decision Requested

That Members approve:

- 2.1 The new Code of Conduct for Elected Members of Cheshire East Council at Appendix 1 of the report;
- 2.2 The procedure relating to investigation of complaints under the new Code of Conduct at Appendix 2 of the report together with the criteria to be used to evaluate complaints at Appendix 3;
- 2.3 The appointment of 4 new Independent Persons as required by Section 28 of the Localism Act 2011, namely Mr Peter John Bryant, Mr Robert Fousert, Mrs Sheila Margaret Roberts and Mr Roger Pomlett for a period of three years expiring 31 December 2015; and
- 2.4 That all Members complete the new Register of Interest Forms within 28 days of the Council meeting.

3.0 Reasons for Recommendations

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

- 3.2 The Act specifically requires that the Council to appoint at least one Independent Person to help it discharge its duty to promote and maintain high standards of conduct.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Carbon reduction - Health

- 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 (Authorised by the Director of Finance and Business Services)

- 7.1 Final cost of implementation of the new legislation is dependent upon local arrangements approved by the Council together with the number of complaints received. However it should be noted that the Act intends 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 (Authorised by the Borough Solicitor)

- 8.1 The Localism Act is being implemented over a phased period of time. The provisions in relation to the replacement of the current standards regime were brought into force with effect from 1 July 2012; however regulations which define the new "disclosable pecuniary interest" were only made on 6 June 2012 which has resulted in delays in finalising the Council's arrangements. As an interim measure the Council's existing Code of Conduct was extended until the July Council meeting.
- 8.2 The Act requires that the Council not only adopts a Code of Conduct but also 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. There is also a specific requirement to appoint an Independent Person to have involvement in the process.

9.0 Risk Management

- 9.1 If the Council fails to adopt an effective Code of Conduct together with an appropriate process for the investigation of complaints which is not only fit for purpose but robust and transparent then there are risks to the Council, not only from a reputational management view point, but also to the integrity of the Council's corporate governance and decision making processes as a whole.

10.0 Background and Options

- 10.1 The Localism Act was enacted in November 2011; however its implementation is being phased over a period of time. With effect from 1 July 2012 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 official 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 It should be noted that 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 At their meeting on 18 June 2011 Members of the Standards Committee received 2 reports which set out in detail the new requirements of the Code. The reports together with the minutes from the meeting of the Standards Committee are attached at Appendix 4 for background information. Members are requested to note that the original Appendices to these reports are not enclosed with the Council Agenda, since a number have been subsequently amended upon the recommendation of the Committee and are now enclosed in new appendices to this report as the final versions recommended for approval.

11.0 Code of Conduct

- 11.1 At their June meeting Members considered a draft Code of Conduct which had been circulated with a view to it being adopted as a standard across the Cheshire authorities, to include Town and Parish Councils and the Fire Authority. The draft had been written to:
- Be consistent with the Nolan principles
 - Balance for the desire for "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 guidance
 - Include those behaviours that Members should seek to uphold as set out in the LGA template

- 11.2 After detailed discussion Members resolved that:
“Subject to a minor alteration to the wording of paragraph 5(a) changing “as” to “where”, the substitution of “courtesy” for “respect” in paragraph 7(a) and the inclusion of explanatory notes in respect of confidentiality and bullying, that the draft Code of Conduct set out in Appendix 4 of the report be recommended for approval and adoption by Full Council on 19 July 2012.
- 11.3 A copy of the Code amended as requested by the Standards Committee is attached at Appendix 1 to the report for Member’s approval and adoption at full Council.
- 11.4 Members are also asked to note that the Constitution Committee was invited to recommend that an amendment be made to the Council’s Constitution which would require a Member to withdraw from a meeting having declared a pecuniary interest. This is the subject of a separate recommendation from the Constitution Committee.

12.0 Procedure for complaints under the new Code

- 12.1 The Standards Committee also considered a new procedure for the investigation of complaints that a member is in breach of the new Code of Conduct.
- 12.2 The procedure which the Committee is now recommending for adoption by Full Council provides as follows:-
- An initial assessment of the complaint by 3 Members plus the Independent Person within 21 days
 - The subject member will be notified a complaint has been received and provided with a copy
 - The Panel may either take no action / refer to the Group Leader for informal action / refer to police or other regulatory agency / refer for local resolution / refer for external investigation
 - There is no right of appeal against the decision of the initial assessment panel
 - Under the local resolution option the complainant and subject member plus up to 3 witnesses and a supporter may attend before an ad hoc panel of 3 Elected Members together with the Independent Person
 - The local resolution panel will attempt to resolve issues without the need for a formal investigation and hearing
 - Matters may be referred from the local resolution panel for formal investigation should it become apparent that issues are more serious or complex
 - Any external investigation should be concluded within 8 weeks where practicable. If the investigation finds evidence of failure to comply with the Code of Conduct the Standards hearing sub committee will conduct a hearing to determine the complaint.

- 12.3 An amended procedure for investigations is set out at Appendix 2 to the report. Members are also asked to approve the criteria to be used at the initial assessment meeting at Appendix 3 which helps determine which of the available options the panel should consider. This is based on the criteria used previously when assessing complaints under the current code.

13.0 Independent Person

- 13.1 The Act requires that the authority appoints 1 or more Independent Person: whose:
- Whose views must be sought and taken into account by the authority before it makes a finding that any Member has failed to comply with the Code of Conduct or impose any sanction
 - Whose views may be sought on whether to investigate a complaint and how to deal with a particular allegation
 - In addition any Member against whom an allegation has been made (including a Town and Parish Councillor) may consult him or her regarding the allegation.
- 13.2 The Act itself prevented any Member who has been a member or co-opted Member of Cheshire East Council in the last 5 years from being appointed as an Independent Person. This meant that current or past Independent Members of the Council's Standards Committee were prevented from undertaking this new role. However transitional regulations have meant that persons who previously have been Independent Members may stand in recognition of the loss of skill and expertise which would otherwise occur. If the appointment is made after 24 July 2012 then the appointment may only be for 12 months.
- 13.3 At the May Council meeting delegated authority was given to undertake a recruitment process for up to 3 Independent Persons as required under Section 28(7) of the Localism Act 2011.
- 13.4 Interviews were held on 4 July 2012. Councillor Hammond chaired the interview panel together with the existing Chair and Vice Chair of the Standards Committee, Nigel Briers and David Sayer. The panel interviewed a number of excellent candidates and were unanimously of the view that they would wish to recommend that Council appoints 4 of the candidates to this new role. This includes an existing Independent Member who has solid experience and will provide continuity together with 3 additional candidates with excellent credentials who will provide a geographical balance across the Borough and a gender balance. The new process does involve the Independent Person at a number of points and a pool of 4 is considered to be advantageous.
- 13.5 Full Council must approve the appointment of the new Independent Persons and it is accordingly recommended that Mr Peter John Bryant, Mr Robert Fousert, Mrs Sheila Margaret Roberts and Mr Roger Pomlett be appointed to the role of Independent Person under Section 27 of the Localism Act 2011 for a period of three years expiring 31 December 2015.

14.0 Register of Interests

- 14.1 Members will note that in adopting the new Code of Conduct the former definitions of “personal” and “prejudicial interests” will no longer be in force. Under the new Code regulations require Members to declare any disclosable pecuniary interests. The Act requires that Members must register their interests “28 days after election”. Unfortunately there is now some controversy since it appears there may have been a drafting error in the regulations so that transitional provisions have not been properly enacted. The DCLG has indicated that nevertheless it hopes Councillors will voluntarily sign the new local Register of Interests ahead of re election. In the interests of good governance it is intended to request Members to complete new register forms and Members are asked to note the position.

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

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Cheshire East Council

CODE OF CONDUCT FOR MEMBERS –2012

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The Code has been adopted under section 27 of the Localism Act 2011 and is based on the following core principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

A General obligations

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

Selflessness

- 1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

Integrity

- 2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

Objectivity

- 3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

Accountability

- 4 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including by local residents.

Openness

- 5 (a) You must be open and transparent where possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions. You must not prevent anyone getting information that they are entitled to by law.

(b) Where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted. (see footnote)

Honesty

- 6 (a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Section B below.

(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

Respect for others

- 7 (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.

(b) You must not do anything which may cause your authority to breach any equality laws.

(c) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.

(d) You must not bully any person, including other councillors, officers of the authority or members of the public. (see footnote)

Leadership

- 8 You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.

You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

Gifts and Hospitality

- 9 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

Notes

“Confidential Information” should not be disclosed except in limited circumstances, for example :

- You have the consent of the person authorised to give it
- You are required by law to do so
- The disclosure is made on a confidential basis to a third party in order to obtain professional advice
- You have satisfied yourself that the disclosure is in the public interest

“Bullying” may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes “cyber bullying”. It may happen once or be part of a pattern of behaviour. It can be contrasted with the legitimate challenges a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

B Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority’s monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse’s or civil partner’s, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority’s monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority’s register, then you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a ‘sensitive interest’*.

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

*A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Extract from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- "M" denotes the relevant Elected Member

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).

(1) 1992 c. 52.

Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

Complaints under the New Code – Procedure

Making a Complaint

1. Complaints must be submitted to the Councils Monitoring Officer using the Councils standard Complaint Form setting out in sufficient detail why the Complainant considers there has been a failure to comply with the relevant Code of Conduct.
2. The Monitoring Officer will acknowledge receipt within 5 working days
3. The Subject Member will be advised that there has been a complaint and will be provided with a copy of the complaint form. Under no circumstances must the Subject Member contact the Complainant direct regarding any issues raised in the complaint.

Initial Assessment / Gateway Procedure

4. The Monitoring Officer will refer the complaint to the Audit and Governance Initial Standards Assessment Panel within 21 days of receipt for an initial assessment
5. After consulting the Independent Person the Panel will determine whether to;
 - **Take no action**
 - **Refer the matter to the relevant Group Leader for informal action** (NB for complaints against Cheshire East Councillors only and not generally an appropriate option if the complaint is from a member of the public)
 - **Refer the matter for Local Resolution**
 - **Refer the matter for formal investigation by an external investigator**
 - **Refer the matter to the Police or other relevant Regulatory Agency**
6. The Initial Assessment Decision on what action to take on a complaint is final. There is no right to have the decision reviewed.
7. The Complainant and Subject Member will be informed of the outcome of the decision.
8. Meetings of the Panel will not be open to the public.

Local Resolution

9. The Complainant and Subject Member will be advised that the Initial assessment panel have concluded that the complaint is suitable for Local Resolution without the need for a formal investigation and full hearing and will be invited to submit written representations outlining the nature of the dispute using a standard template to ensure consistency.
10. Both the Complainant and Subject Member will be able to bring a Supporter and up to three witnesses each to accompany them before an ad hoc panel of three elected members together with the Independent Person. The Supporter will not represent the Subject Member but will be able to confer with him or her.
11. The Panel will consider the written representations and hear any relevant evidence before reaching a determination and considering whether any sanction is appropriate.
12. The Panel may refer the matter for a formal investigation should it become apparent that the issues are more complex or serious than was originally anticipated.
13. Local Resolution Panels will normally meet in public and will be convened within 28 days of the decision of the Initial Assessment Panel subject to availability of the relevant parties.
14. Both the Complainant and Subject Member will receive copies of each others written statements and details of any witness to be called 5 working days before the Panel meets. Copies will be made available to three Panel members and Independent Person at the same time.
15. The Panel will announce their decision at the end of the hearing and a formal Decision Notice will be prepared and sent to all relevant parties within 5 working days. The Decision Notice will be published on the Councils website and reported to the next meeting of the Audit and Governance Committee.
16. There is no right of Appeal from the decision of the Local Resolution Panel which is intended to resolve less serious complaints speedily and cost effectively.

External Investigation

17. The matter will be referred for an independent investigation by a suitably experienced investigative officer. In most cases the investigation is expected to be completed within 8 weeks of the referral.
18. The report of the independent investigator should incorporate the following:-

- **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
- **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.
- **Complainants details and any relevant background**
- **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities
- **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn an outline of whether the investigating officer considers there has been a breach and any aggravating or mitigating facts.
- **Schedule** - a list of witnesses interviewed and copies of relevant documents

19. A copy of the draft report will be circulated to the subject member and complainant to check for factual accuracy.
20. The Investigating Officer will take into account any comments received before sending the final report to the Monitoring Officer.

External Investigation – No Evidence of Failure to comply

21. Where the report concludes that there is no evidence of failure to comply with the Code of Conduct the Monitoring Officer will review the report in consultation with the Independent Person.
22. If satisfied with the conclusions the Complainant, Subject Member and the Town or Parish Clerk (if appropriate) will be notified within 15 working days that no further action will be taken and will be given a copy of the final report.
23. If after consultation with the Independent Person the Monitoring Officer is not satisfied that the investigation has been concluded properly she may ask the Independent Investigator to reconsider the report and / or refer the matter to the Standards Hearings sub committee for a formal hearing of the issues.

External Investigation – Evidence of Failure to comply

24. Where the report concludes that there has been a failure to comply with the provisions of the Code of Conduct the matter will be referred to the Standards Hearings sub committee who will conduct a hearing to determine if the subject member has failed to comply with the provisions of the Code and if so what sanction is appropriate.
25. The Hearings sub committee will consider the matter afresh having regard to the Investigators findings and all relevant evidence presented by the Complainant and subject member.
26. 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.
27. The Hearings sub committee will announce their decision at the end of the hearing and a formal Decision Notice will be prepared and sent to all relevant parties within 5 working days. The Decision Notice will be published on the Councils website and reported to the next meeting of the Audit and Governance Committee.
28. Meetings of the Hearings sub committee will be subject to the normal rules for publication of agendas and access to information.
29. There is no right of appeal from the decision of the Standards Hearings sub committee.

Independent Person

30. The Subject Member has the opportunity to consult the Independent Person at any stage in the investigation process and prior to the final determination.

Membership of Panels / sub committees

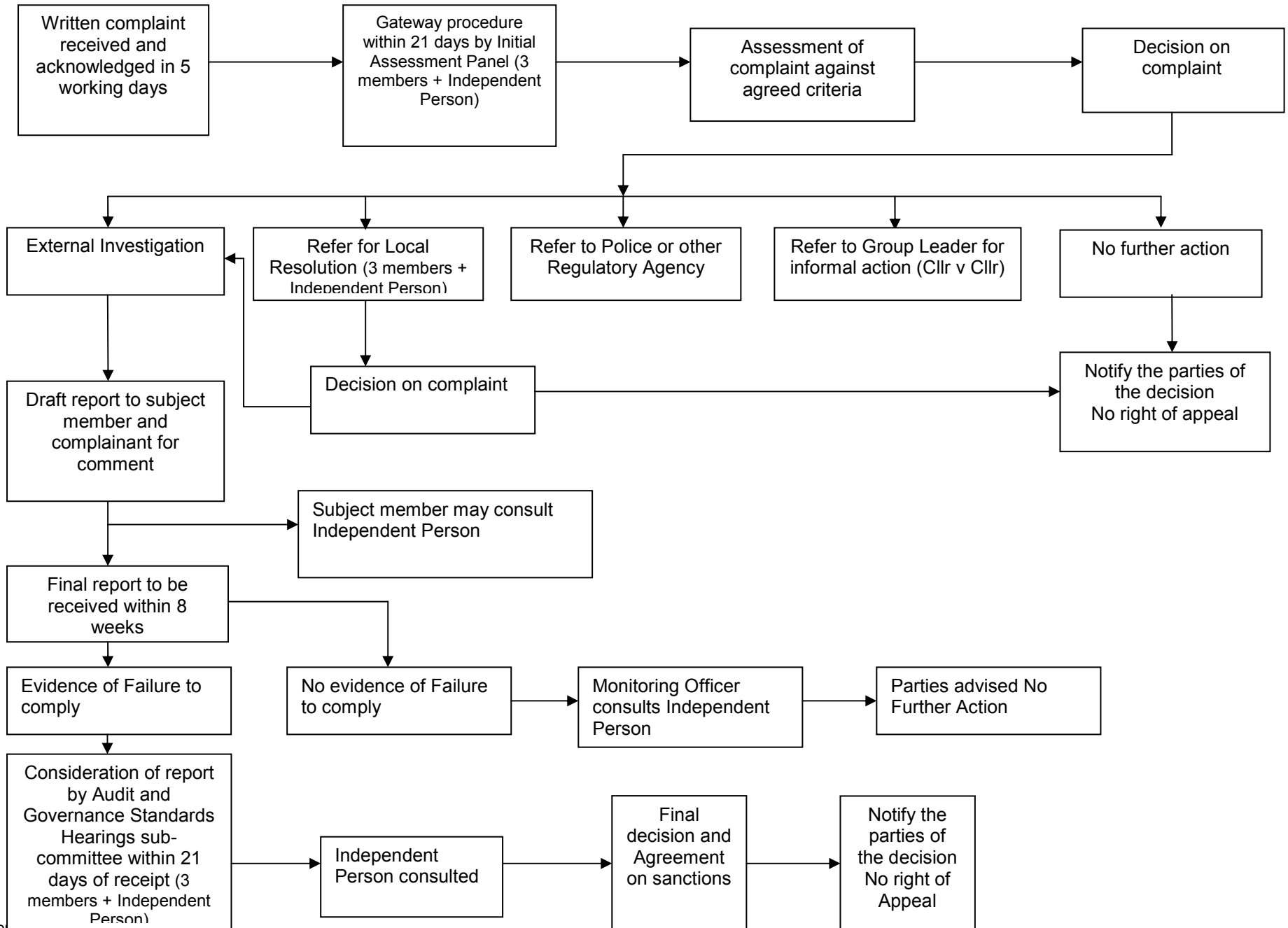
31. If a Member has sat on a Local Resolution Panel which refers a matter for external investigation then he or she may not subsequently sit on any hearings sub committee.

Vexatious Complaints

32. The Council will maintain a list of vexatious or repeated complaints and will report any concerns regarding abuse of the process to the Audit and Governance Committee.

July 2012

Procedure for Complaints



ASSESSMENT CRITERIA**Initial Tests**

Before any assessment of a complaint begins, the Initial Assessment Panel must be satisfied that the complaint meets the following tests:

- It is a complaint against one or more named Members of Cheshire East Council or a Town or Parish Council within Cheshire East Borough;
- The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the complainant will be informed that no further action will be taken in respect of the complaint.

If the above tests are met the Panel will have regard to the following criteria:

1. **Adequate information** – The Panel will want to be satisfied that it has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. **Timescale** – The Panel will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 12 months prior to the complaint being submitted (except if it decides there are exceptional circumstances);
3. **Seriousness of the complaint** – The Panel will not normally refer a matter for investigation or other action if it is considered trivial, malicious, politically motivated or tit-for-tat;
4. **Public Interest** - If the complaint relates to an ex-Member of Cheshire East or one of its Town/Parish Councils who is now a Member of another Authority the Panel may refer the matter to that Authority for consideration. If the Member has resigned, is seriously ill or has died the Panel will only refer the matter for investigation or other action if it considers that the public interest will be served by so doing. If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or has been investigated by other regulatory authorities it is unlikely to be referred for investigation or other action unless it

is evident that public interest will be served by further action being taken.

The Panel has the option to make the following decisions on any complaint ;

- **That No Further Action be Taken in respect of the matter**
- **That the Matter be Referred to the Group Leader for Informal Action** – this will normally be only where the complaint relates to Cheshire East Councillors and will not generally be appropriate if the complaint is from a member of the public
- **That the Matter is Referred for Local Resolution** – this enables less serious complaints to be resolved speedily and cost effectively. The matter may subsequently be referred for formal investigation should it become apparent that the issues are more serious than was originally anticipated
- **That the Matter is Referred for Formal Investigation by an External Investigator-** this enables the most serious allegations to be thoroughly investigated. In most cases the Investigator will be expected to complete his investigation and produce a written report within 8 weeks of the referral.
- **That the Matter is Referred to the Police or other relevant Regulatory Agency** – this would be appropriate where it appears a criminal offence or breach of regulations may have taken place and in particular any failure to declare a Pecuniary Interest under s 30 -31 of the Localism act 2011

**Cheshire East Council
July 2012**

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.

3.0 Decision Requested

- 2.1 That subject to consideration of those issues raised in paragraph 12 the Standards Committee recommends to Council that the draft Code of Conduct at Appendix 4 of the report is recommended for adoption by Full Council on 19 July 2012.

5.0 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.

6.0 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 Authority’s 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 Councils (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. 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:

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 18 June 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Localism Act 2011 – Procedure for Complaints
under the new Code

1.0 Report Summary

- 1.1 The report asks Members to approve and recommend to Full Council the adoption of a new procedure for investigating complaints under the Council's new Code of Conduct as required by the Localism Act 2011.

4.0 Decision Requested

- 4.1 That the procedure relating to the investigation of complaints under the new Code of Conduct at Appendix 1 of the report together with the criteria used to evaluate complaints at Appendix 3 is recommended for adoption by the Council on 19 July 2012.
- 4.2 That members recommend that the Constitution Committee at its meeting on the 5 July 2012 approve the Terms of Reference set out at Appendix 4 for formal adoption by the Council on 19 July 2012

7.0 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.

8.0 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, are critical to the Corporate Governance of the Council and also underpin 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 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.

9.0 Risk Management

- 9.1 If the Council fails to adopt an appropriate process for the investigation of complaints which is not only fit for purpose, but robust and transparent, 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 A suggested draft procedure is set out at Appendix 1 which provides for:-
- An initial assessment of the complaint by 3 Members plus the Independent Person within 21 days
 - The Panel may either Take No Action/ refer to the Group Leader for Informal Action / refer to Police or other regulatory agency / refer for Local Resolution / refer for External Investigation
 - There is no right of appeal against the decision of the initial assessment panel
 - Under the Local Resolution option the Complainant and Subject Member plus up to one witness each would attend before an ad hoc panel of 3 Elected Members together with the Independent Person

- The Local Resolution Panel will attempt to resolve issues without the need for a formal investigation and Hearing
- Matters may be referred from the Local Resolution Panel for formal investigation should it become apparent that issues are more complex or serious
- Any external investigation should be concluded within 8 weeks where practicable. If the investigation finds evidence of failure to comply with the Code of Conduct the Standards Hearing sub committee will conduct a Hearing to determine the complaint

10.4 Members are requested to approve the policy set out at Appendix 1. A flow chart summarising the procedure is attached at Appendix 2 for Members assistance.

11.0 Standard Documents

11.1 Any Complainants will be asked to complete the Council's standard complaint form setting out in sufficient detail why the Complainant considers there has been failure to comply with the relevant Code of Conduct. This is the Council's current procedure and allows consistency of information to be placed before the initial assessment panel.

11.2 Complainants and Subject Members will also be asked to complete a standard form prior to the Local Resolution of any complaint. This is to allow basic information to be exchanged between the Complainant and Subject Member and for the panel itself to have sufficient information prior to the Local Resolution meeting. It should be noted that the Complainant and Subject Member may both appear before the Panel and bring one witness each.

11.3 Members are also asked to approve at Appendix 3 the criteria to be used at the Initial Assessment meeting which helps determine which of the available options the panel should consider. This is based on the criteria used previously when assessing complaints under the current code.

12.0 Terms of Reference

12.1 Members are asked to approve the Terms of Reference at Appendix 4 of

- Audit and Governance Committee
- the Initial Assessment Panel
- the Local Resolution Panel
- the Hearing sub committee

Constitution Committee at its meeting on 5 July 2012 will be asked to recommend that the Council approves their formal adoption.

12.2 Members are asked to note that if a Member has sat on a Local Resolution panel which subsequently refers the matter for external investigation then he or she should not subsequently sit on any Hearings sub committee.

13.0 Independent Person

13.1 The Act requires that the Authority appoints 1 or more Independent Persons whose:

- Views must be sought and taken into account by the Authority before it makes a finding that any Member has failed to comply with its Code of Conduct or impose any sanction
- Views may be sought on whether to investigate a complaint and how to deal with a particular allegation
- In addition any Member against whom an allegation has been made (including a Town and Parish Councillor) may consult him or her regarding the allegation

13.2 The Act itself prevents any person who has been a Member or a co-opted Member of Cheshire East Council in the last 5 years from being appointed as an Independent Person. Accordingly current or past Independent Members of the Council's Standards Committee are prevented from being Independent Persons for the same Council under the 2011 Act. However draft regulations are now available setting out transitional arrangements which will enable the Council to have the option to appoint persons who have previously been Independent Members as the new Independent Persons in view of the loss of skill and expertise which would otherwise occur.

13.3 At the May Council meeting the Monitoring Officer was given delegated authority to undertake a recruitment process for up to 3 Independent Persons as required under Section 28(7) of the Localism Act 2011 once details of the transitional provisions had been received.

13.4 Accordingly a job description and person specification and has been drafted in order to recruit up to 3 Independent Persons. The closing date is for applications is 25 June 2012 with interviews scheduled for the week commencing 2 July 2012.

13.5 Full Council must approve the appointment of the new Independent Persons. At Annual Council on 16 May 2012 Council indicated that if necessary in order to comply with statutory timescales the Council's urgency sub committee should approve the provisional appointment of Independent Persons subject to formal ratification by Full Council at the July meeting. Given the lateness of the regulations being made this may not be necessary.

14.0 Summary

Members are asked to note and approve the proposed procedure for the investigation of complaints under the new Code of Conduct and note that this procedure will apply to any complaints against Town and Parish Councillors as well as Cheshire East Councillors.

15.0 Access to Information

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

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