

## **Council – 19 July 2012**

### **Extract from Minutes of Standards Committee 18 June 2012**

#### **Localism Act 2011: Code of Conduct**

At the previous meeting of the Issues and Ideas Working Group held on 14 May 2012, Members considered two draft Codes of Conduct produced by the Department of Communities and Local Government (DCLG) and the Local Government Association (LGA). In addition, on 17 May 2012 the National Association of Local Councils (NALC) had issued a template code for Parish Councils, a copy of which was provided for Members' information.

To ensure consistency across Cheshire, and in line with preferences expressed by Members at the last meeting, a draft Code of Conduct based on the DCLG illustrative text had been developed and adapted to include behaviours Members were expected to uphold (that were part of the Model Code) but which had not been explicitly defined in the illustrative text e.g. maintaining confidentiality and respect for others. Equally, the requirement not to bring a Members' office into disrepute had not been included as it was considered that this had, in the past, been used as a way of reflecting a complainant's wider dissatisfaction with an issue rather than address alleged breaches of the Code of Conduct.

The Borough Solicitor drew Members attention to a number of changes from the Model Code not present in the draft, most noticeably in respect of declaration of interests. It was reported that the Regulations in respect of disclosable pecuniary interests had now been published, which would replace the need to declare personal and prejudicial interests. Although the Regulations prescribed these interests, it did not stipulate that Councillors should withdraw from the meeting room whilst the matter was debated/voted upon and it was suggested that the Committee may wish to recommend to Constitution Committee/Council that this requirement be included in the Council's Procedure Rules.

Opposing views were expressed about whether Members should withdraw from the meeting when the item was first called or when the vote was taken. Having considered the arguments put forward, it was recommended that a requirement to withdraw from the meeting should be at the point an item was called.

The debate then turned to issues relating to confidentiality, bullying and respect. It was suggested that, due to the need to maintain confidentiality, it was not always possible for Members to be open at all time and a minor change to the wording of paragraph 5(a) Confidentiality, changing 'as' to 'where' possible would be appropriate. A request was also made for explanatory notes to be included in the Code which defined these three behaviours; the Monitoring Officer suggesting that the definitions drawn up by Standards for England in respect of confidentiality and bullying (with the addition of the phrase 'cyber bullying' to cover abuse of electronic

communications) could be added for clarity. A further alteration, changing the word 'respect' to 'courtesy' would, Members felt, be self explanatory and negate the need for further addendums to the Code.

**RESOLVED:** That -

- a) 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; 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; and
- b) Constitution Committee be invited to recommend to Council on 19 July 2012, an amendment to the Council's Constitution which would require a Member to withdraw from a meeting having declared a pecuniary interest.

### **Minute 5: Investigation of Complaints Procedure**

Principal authorities would, under the Localism Act, be responsible for investigating complaints that a member of the Borough Council or a Town/Parish Councillor in their area had breached their Code of Conduct. This would require the authority to have in place a procedure for dealing with complaints.

As a result of discussions by both the Committee and the Issues and Ideas Working Group, it has been agreed that responsibility for standards matters should transfer to the Audit and Governance Committee, which Council had approved on 16 May 2012 i.e.

*That 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*

The Terms of Reference for the Committee, now submitted, suggested the formation of three sub-committees to deal with complaints; an Initial Assessment Panel to determine the validity of the complaint against agreed criteria, a Local Resolution Panel to determine/resolve minor breaches of the Code and a Hearings Sub-Committee to consider reports from an Investigative Officer should an external investigation been deemed necessary. A draft procedure together with an explanatory flowchart and the assessment criteria to be followed were presented to Members by the Borough Solicitor.

In general, the proposals found favour with the Committee; however the following matters were debated:

- i) Notification of complaint: Members considered that the Subject Member, against whom the complaint had been made, should be notified of the fact and provided with a copy of the complaint form BUT that s/he should

- be directed not to make contact with the Complainant until such time as the complaint process had been concluded.
- ii) It was felt that permitting only one witness to attend a hearing was too restricted and whilst the procedure should be managed, Subject Members should be permitted to bring no more than 3 witnesses plus a supporter if required.
  - iii) The present procedure did not allow for the right of review by the Complainant or Subject Member following the making of a decision. Contrasting opinions were expressed as to whether this option should be made available; the Committee deciding on balance that, as the new process was designed to be more steam-lined than at present, it should not be included.
  - iv) Where no evidence of failure to comply with the Code was found, it was requested that the Monitoring Officer maintain a record of complaints received so as to identify vexatious complainants at an early stage.
  - v) For consistency, it was agreed that a decision notice should be published following a meeting of the Local Resolution Panel.

**RESOLVED:** That –

- a) Subject to the inclusion of the amendments listed above, 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 set out in appendix 3 be recommended for adoption by the Council on 19 July 2012; and
- b) Constitution Committee, at its meeting on 5 July 2012, be invited to approve the Terms of Reference set out in appendix 4 for formal adoption by Council on 19 July 2012.