

Wolverhampton City Council

OPEN DECISION ITEM

STANDARDS COMMITTEE

Date **14 JUNE 2012**

Originating Service Group(s) **DELIVERY (GOVERNANCE)**

Contact Officer(s)/ **S KEMBREY** **F DAVIS**
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Title **COUNCILLORS' CODE OF CONDUCT/INDEPENDENT PERSONS**

RECOMMENDATIONS

- (a) That the Committee receive details of two examples of a Councillors Code of Conduct which are attached to this report, which is consistent with the seven "Nolan" principles of standards in public life.
- (b) That the Monitoring Officer be authorised to advertise a vacancy for the appointment of one Independent Person and two reserve Independent Persons to serve on the Standards Committee.
- (c) That an Appointments Committee comprising the Monitoring Officer, Deputy Monitoring Officer and three other members of the Standards Committee be established to shortlist and interview candidates to act as Independent Persons and to make a recommendation to full Council for appointment.
- (d) That full Council be recommended to (a) approve the re-adoption on the implementation date of the new standards regime the current Code of Conduct for Councillors and co-opted Members as revised by the Monitoring Officer to reflect the mandatory requirements of the Localism Act 2011 in relation to Standards and (b) authorise the Monitoring Officer to thereafter review the revised code and prepare a report and draft Code for consideration by SAG and Standards Committee with a view to recommending the adoption of the Code by the full Council.

COUNCILLORS CODE OF CONDUCT/INDEPENDENT PERSONS

1.0 PURPOSE OF REPORT

- (a) To seek endorsement to measures required to implement that part of the Localism Act relating to Councillor's Code of Conduct

2.0 BACKGROUND TO REPORT

- 2.1 The current standards regime is set to end on 30 June 2012 and from 1 July a new standards regime under the Localism Act 2011 is implemented. The Act sweeps away the current statutory provisions under the Local Government Act 2000, including a requirement to have a statutory Standards Committee and a Code of Conduct based on a statutory model.
- 2.2 There will still be a statutory duty to promote and maintain high standards of conduct by Councillors and co-opted members and in discharging that duty the Council must adopt a Code of Conduct setting out what is expected of Councillors when they are acting in that capacity.
- 2.3 It is largely for the Council to determine the composition of its new Code of Conduct with the only mandatory requirements being that it complies with the seven principles of public life (the Nolan Committee principles); and contains appropriate provisions for the registration of pecuniary and non-pecuniary interests. Disclosable pecuniary interests are a key change which will be detailed in regulations issued by the Secretary of State. Councillors will be required to register DPIs and not take part in any discussion or vote on an item in which they have a DPI.
- 2.4 There has been some delay in implementing the provisions of the 2011 Act that apply to standards and, in particular, the regulations defining what will constitute DPIs have not yet been published. Consequently, as the Government's stated intention is to bring the new standards regime into force on 1 July, it is suggested that to avoid the possibility of the Council not having a Code in place (the Government may give a period of grace but this is not certain) the Special Advisory Group (SAG) and Standards Committee will be asked to recommend to full Council the re-adoption on the implementation date of the new standards regime the current Code of Conduct for Councillors and Co-opted Members as revised by the Monitoring Officer to reflect the mandatory requirements of the 2011 Act in relation to standards. The Monitoring Officer could thereafter review the revised Code and prepare a report and draft code for consideration by SAG and Standards Committee with a view to recommending the adoption of the code by the full Council.

3.0 COUNCILLOR'S CODE OF CONDUCT

- 3.1 On 11 April 2012 Bob Neill MP on behalf of the Department of Culture and Local Government (DCLG) wrote to all local authority leaders to advise that the Department was making available an illustrative text for a Code of Conduct for Councillors and Independent and Co-Opted Members of Local Authorities.

- 3.2 A copy of the illustrative Code as it would apply to Wolverhampton City Council is attached to this report at Appendix 1.
- 3.3 The text provides an example of what a Local Authority's Code of Conduct for the new Standards arrangements under the Localism Act 2011 might look like.
- 3.4 In addition to the example code submitted by DCLG, an example Code consistent with the Nolan principles has also been prepared by Solace in conjunction with AcSeS and the LGA. This example is attached at Appendix 2.
- 3.5 By way of background to these two example Codes, the Localism Act 2011 abolishes the existing Standards Regime, and Standards for England itself was abolished on 31 March. The Act introduces new Standards arrangements including the involvement of an independent person in allegations of misconduct (also dealt with in this report), a new criminal offence for failing to declare or register interests, and the requirement for Local Authorities to adopt a Code of Conduct that is consistent with the seven "Nolan" principles of standards in public life i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership, as well as making provision for the registration and disclosure of pecuniary and non-pecuniary interests. On this latter point Regulations are awaited on the definition of pecuniary interests.
- 3.6 Under the previous Standards regime, this Council along with most other authorities adopted the National Model Code of Conduct. The Council's current code was adopted on 11 July 2007.
- 3.7 Under the new arrangements the Council can retain its current code or adopt a new Code. The new arrangements stress the importance of the Nolan Principles and the Code attached at Appendix 1 follows the DCLG model of what a Nolan compliant model Code, featuring provisions about pecuniary and non-pecuniary interests might look like. The Solace/AcSeS/LGA example code at Appendix 2 is quite different from the DCLG Code. The Authority therefore has a number of options when considering its Code of conduct under the new standards regime:-
- a) retain its existing Code, unamended
 - b) amend the existing Code to make particular reference to the Nolan Principles,
 - c) adopt the DCLG Code
 - d) adopt the Solace/AcSeS/LGA Code,
 - e) adopt a Code using parts from both DCLG and Solace/AcSeS/LGA Codes.
- 3.8 The two examples attached to this report are very different models to the Council's current Code that underpinned the previous Standards regime. The DCLG have stated that the aim of the new Standards measures are to ensure high standards in public life, prevent corruption, and put a stop to petty, vexatious complaints that consume local authority resources and damage the reputation of Local Government. These aims could assist the Authority in its consideration on which option set out in paragraph 2.7 above to take.

4.0 INDEPENDENT PERSONS

- 4.1 The new standards arrangements under the Localism Act 2012 must include provision for the appointment by Council of at least 1 Independent Person.

- 4.2 The independent person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council (not just of those present in voting).
- 4.3 The person is considered not to be “independent” if:
- a) They are or have been within the last five years, a Councillor, co-opted Member or an employee of the Council;
 - b) They are or have been within the last five years, a Councillor or co-opted Member of a committee or sub-committee of the Council. Bevan Brittan solicitors have advised that this precludes existing Independent Members of the Standards Committee from being appointed as an Independent Person under the new regime; or
 - c) He is a relative or close friend of a current elected or co-opted member or officer
- 4.4 Relative or close friend comprises;
- (a) a spouse or civil partner;
 - (b) any person with whom the candidate is living as if they are a spouses or civil partner;
 - (c) grandparents;
 - (d) any person who is a lineal descendant of the candidate’s grandparent;
 - (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
 - (f) the spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
 - (g) any person living with the person within paragraphs (c), (d) or (e) as if they were a spouse or civil partner to that person.

5.0 FUNCTIONS OF THE INDEPENDENT PERSON

- 5.1 The functions of the Independent Person under the new regime are;
- (a) they must be consulted by the authority before it makes a finding as to whether a Councillor has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Councillor.
 - (b) they may be consulted by the authority in respect of a Standards Complaint at any other stage; and
 - (c) they may be consulted by a Councillor or Co-opted Member of the Council against whom a complaint has been made.
- 5.2 This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the Councillor against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

6.0 HOW MANY INDEPENDENT PERSONS?

- 6.1 The Act requires for the appointment of one Independent Person but gives discretion to appoint more, it provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be called upon at short notice, without the need for re advertisement, in the event that the Independent Person is no longer able to discharge the function.
- 6.2 After considering this report Standards Committee is requested to consider how many Independent Persons are required and to consider the recommendations at paragraph 1.2 and 1.3 of this report.

7. FINANCIAL IMPLICATIONS

- 7.1 The new standards regime is not expected to generate significant additional costs. Any work on the Code of Conduct will be conducted in house by Legal Services and the costs of appointment of Independent Persons, advertising for example, will be accommodated within existing Democratic Services revenue budgets. [GE/29052012/V]

8. LEGAL IMPLICATIONS

- 8.1 The Council is required to implement the amended Standards regime in accordance with part 1, chapter 7 of the Localism Act 2011
[FD/25052011/Q]

9. EQUALITIES IMPLICATIONS

- 9.1 The appointment of Independent Persons will be conducted in accordance with equality provision.

10. ENVIRONMENTAL IMPLICATIONS

- 10.1 There are no direct environmental implications arising from this report.

11. SCHEDULE OF BACKGROUND PAPERS

Localism Act 2011

Report to Standards Committee 17 January 2012.

APPENDIX 1

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of Wolverhampton City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member –

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

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.

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 are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

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 in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of authority, ensure that such resources are not 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.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

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 the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest' i.e. one that the Member or Co-opted Members and the Monitoring Officer, considers that disclosure of 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.

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.

APPENDIX 2

Template Code of Conduct

As a member or co-opted member of *[X authority]* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in *[X authority]* this will be done as follows: *[to be completed by individual authorities]*

As a Member of *[X authority]*, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the *[county][borough][Authority's area]* or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.