

**AGENDA ITEM 12**  
**STANDARDS COMMITTEE – 15<sup>TH</sup> JULY 2012**  
**RECOMMENDED ITEM FROM COUNCIL HELD ON 25<sup>TH</sup> JULY 2012**

Council	Council	Agenda Item No.:	11
Date:	25 <sup>th</sup> July 2012	Category	*
Subject:	The Council's Ethical Framework under the Localism Act 2011.	Status	Open
Report by:	Solicitor to the Council and Monitoring Officer		
Other Officers involved:	Deputy Monitoring Officer		
Director	Chief Executive Officer		
Relevant Portfolio Holder	N/A		

**RELEVANT CORPORATE AIMS**

COMMUNITY SAFETY – Ensuring that communities are safe and secure  
CUSTOMER FOCUSED SERVICES – Providing excellent customer focused services  
ENVIRONMENT – Promoting and enhancing a clean and sustainable environment  
REGENERATION – Developing healthy, prosperous and sustainable communities  
SOCIAL INCLUSION – Promoting fairness, equality and lifelong learning.  
STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

**This relates to all the aims as it relates to the ethical framework under which all members operate.**

**TARGETS**

N/A

**VALUE FOR MONEY**

The expenditure of money is not directly involved.

## **THE REPORT**

### **Background**

The Localism Act 2011 has made substantial changes to the ethical framework which governing members' behaviour when acting as councillors. At Council on 20<sup>th</sup> June, Council delegated to me the authority to take all steps necessary to be in a position to present to you this report making recommendations as to the Code, the procedures and the necessary appointments.

### **The Report**

#### 1. Code of Conduct

There is no statutory model Code.

Following discussions at meetings of the Derbyshire Monitoring Officers and discussion with members through Cabinet, the attached has been produced. This is based on the LGA draft with some modifications. It is simple in format and intended to be user friendly. It will need back up in the form of guidance on some aspects and training both of which will be organised following this meeting.

It refers to the statutory list of Disclosable Pecuniary Interests from the Regulations and includes the other Interests that the Council may decide to apply (see below).

The proposed Code of conduct is attached and recommendation one is that you approve this as your Code. Once approved, the Code will have to be advertised.

#### 2. Interests

These are split into 2 groups under section 28 (2) of the Localism Act 2011. The first of these, Disclosable Pecuniary Interests, have been proscribed by Regulations. These are the ones around which there are criminal offences for failure to comply. They are the interests of you and your spouse or partner.

Section 28(2) also provides for the Council to add to the Code interests other than pecuniary interests where the Council considers this appropriate. Failure to comply with these would be a breach of the Code for which action could be taken by the Council, but would not be a criminal offence. The draft Code contains suggestions for these. They are based on what members have been working to for the last 12 years and so should be familiar.

In relation to Disclosable Pecuniary Interests I have already written to members requesting a registration from them within the 28 days allowed by the law. I will

be writing further to members after today to request registration of the interests other than Disclosable Pecuniary Interests if the Council decides to add these to the Code.

It remains an obligation for you to register changes within 28 days. Should you have a Disclosable Pecuniary Interest in a matter before a meeting, but not yet have registered it, you must in those circumstances declare that Interest at the meeting.

### 3. The Register of Interests

Under section 29 of the Act, I am required to keep a Register of your interests and to place it on the web site. I have no choice in this. I am also required to do the same with Parish/Town Council Registers. The Registers must also be available for inspection by the public.

This is in addition to the Gifts and Hospitality Register. Once again members must record separately any gift or hospitality received. However now this relates to anything with a value of £100 or more. This Register is kept by the CEO's Personal Assistants.

### 4. Disclosing Interests

The obligation is to register the interest within 28 days of it arising. The Act does not require the disclosure of registered DPI's in meetings, in the interests of openness and transparency I have included a requirement to do so in the proposed Code of Conduct.

The legislation, section 31 of the Localism act 2011 prevents the member from participating or voting. It does not require the member to leave the Chamber at this point in time. The legislation (at Section 31(10) Localism Act 2011) recognises that authorities may wish to include standing orders requiring members to leave in such circumstance. This is what I am proposing. I suggest the following is added to Council Procedure Rules:-

4.1.4A.1 Where a Member has a Disclosable Pecuniary Interest in any business of the Authority; the Member must withdraw from the meeting room whenever it becomes apparent that the business is being considered, unless the member has been granted a dispensation.

4.1.4A.2 Where a Member has a non statutory interest (as defined in the Bolsover Members' Code of Conduct) in any business of the Authority, and that interest is significant, the Member must withdraw from the meeting room whenever it becomes apparent that the business is being considered.

### 5. Criminal Offences

These are:-

- Failure to disclose a Disclosable Pecuniary Interest to a meeting where that interest is not registered.
- Failure to notify the Monitoring officer of the Disclosable Pecuniary Interest within 28 days
- Participating in any discussion or vote when the Member has a Disclosable Pecuniary Interest.
- As an Executive Member, taking action under delegated powers where the Member has a Disclosable Pecuniary Interest.
- Providing false or misleading information in relation to the registration or disclosure of a Disclosable Pecuniary Interest where the Member knows the information is false or misleading or is reckless as to whether the information is true or misleading.

These are meant to be for the most serious breaches. The penalties on conviction are:-

- A fine at Level 5 of the standard scale (£5000)
- Disqualification of the Member for up to 5 years from being elected or co-opted.

Prosecutions may only be brought by the DPP within 12 months of there being sufficient evidence of the alleged offence but with an absolute limit of 3 years.

## 6. Complaints procedure

Section 28(6)(b) of the Localism Act 2011 requires the Council to have arrangements in place for dealing with complaints. There is no requirement to have a Standards Committee. However it is considered, following informal discussions with Members, that the easiest way to have the appropriate procedures in place for hearing complaints is by way of a Standards Committee.

A Standards Committee would have to be politically balanced. There may be co-optees, but co-optees may not vote on any matter before the Committee. A co-optee could be Chair of the Committee but would not be able to exercise a casting vote on any issue.

Current co-optees seem very keen to continue on the Committee. Most haven't applied to be Independent Persons (see below).

The recommendation suggests that a Standards Committee of 6 elected members be established, that there be 4 Labour Councillors and 1 from each of the Opposition Groups. In addition there should be co-opted onto the Committee 2 non elected persons formally co-opted to the previous Standards Committee. I have recommended that the previous Chair and Vice Chair, John Yates and Ruth Jaffray be appointed as the co-optees.

There is also the possibility that the Committee could have Parish Council representation on it and Members should consider if this is what they wish to do.

The Independent Remuneration Panel will need to consider allowances in relation to the co-optees and the Chair and Vice Chair of this Committee.

#### 7. Audit Committee

The changes to Standards Committee listed above also have an affect on Audit Committee. Currently Audit Committee consists of 3 elected members and 3 co-optees. The recommendation is that Audit Committee consists of 6 elected Members and 2 co-optees. It would have to be politically balanced, resulting in there being 4 Labour Councillors, 1 Independent Councillor and 1 Residents Association.

As with the Standards Committee, the Independent Remuneration Panel will need to consider allowances in relation to the co-optees and the Chair and Vice Chair of this Committee.

#### 8. Complaints process

The new system does not require the setting up of assessment sub committees to consider complaints, as under the previous system. Instead it is left for the Council to set up its own procedure.

Attached is a flow chart setting out responsibilities for dealing with complaints. Under this system the assessment of complaints will be carried out by the Monitoring Officer. It is proposed that the Council approve the principles in the flow chart and delegate power to me to put in place a suitable procedure to go with this and to be put on the web. Any Hearing Panel would consist of 3 elected members and no co-optees.

#### 9. Independent Persons

This new role is to give a check and a balance on the consideration of allegations against members at various stages of the process. Both the Monitoring Officer and the Member the subject of the complaint can seek the views of these Independent Persons during the course of considering allegations. The Monitoring Officer **must** consult the Independent Persons in certain circumstances including where a Hearing Panel wishes to impose a sanction. The Independent Persons are not Members of the Standards Committee.

Section 28 of the Localism Act 2011 requires the Council to appoint at least one of these persons. It is recommended that 2 are appointed to give some resilience in this role.

In accordance with my delegated power and the requirements of the legislation these roles were advertised on the basis that the successful 2 candidates would be paid £800 per year. £800 was chosen as this seemed to be the amount chosen by neighbouring and many other councils. There were 24 applications.

Interviews took place on the 9<sup>th</sup> July. The Interview Panel consisted of the Deputy Leader, Councillor Clifton, the Chief Executive Officer and the Deputy Monitoring Officer. Their recommendation is to appoint Mr S. Wainwright and Mr S. M. Wood to this role.

#### 10. Parish Councils

In relation to Parish Councils, I have written to all the Parish and Town Councils explaining what the District is doing and sending a draft of the proposed Bolsover Members' Code of conduct. Parish and Town Councils have a choice as to which Code they adopt. Some have expressed a desire to adopt the same Code as the District.

My Deputy and I will be attending the Parish Liaison Meeting at the end of July to talk to the Parishes about these issues.

### **ISSUES FOR CONSIDERATION**

The recommendations listed in relation to the new ethical framework.

### **IMPLICATIONS**

Financial: None

Legal: As in the report. Under the Localism Act 2011 only Council can approve a Code of Conduct for members.

Human Resources: None

### **RECOMMENDATIONS that**

- 1. in accordance with section 27(2) of the Localism act 2011, Members adopt the Code of Conduct attached to this report as the Bolsover District Council Members' Code of Conduct.**
- 2. the following is approved for inclusion in the Council Procedure Rules in the Constitution:-**

4.1.4A.1 Where a Member has a Disclosable Pecuniary Interest in any business of the Authority, the Member must withdraw from the meeting room whenever it becomes apparent that the business is being considered, unless the member has been granted a dispensation.

4.1.4A.2 Where a Member has a non statutory interest (as defined in the Bolsover Members' Code of Conduct) in any business of the Authority, and that interest is significant, the Member must withdraw from the meeting room whenever it becomes apparent that the business is being considered.

3. (1) a Standards Committee is established,  
(2) there be 4 Labour Councillors, 1 Independent Councillor and 1 Residents Association Councillor,  
(3) John Yates and Jean Ruth Jaffray be co-opted onto the Committee,  
(4) Members determine whether one of the Co-optees should Chair the Committee.  
(5) Members determine whether there should be Parish/Town Council representation.  
(6) the terms of reference be as attached.
4. (1) a new Audit Committee is established,  
(2) there be 4 Labour Councillors, 1 Independent Councillor and 1 Residents Association Councillor,  
(3) the Council appoint 2 co-optees onto the Committee,  
(4) Members determine whether one of the Co-optees should Chair the Committee,  
(5) the terms of reference remain the same as for the previous Audit Committee.
5. Members approve the attached flow chart showing the outcomes for consideration of complaints.
6. Members delegate to the Monitoring Officer authority to develop and approve a complaints process based on this flow chart but with the proviso that the Monitoring Officer can refer assessment of a complaint to the Standards Committee in appropriate circumstances.
7. Members delegate to the Monitoring Officer the authority to select three Members of Standards Committee to sit on a Hearing Panel with power to determine allegations that a Councillor has breached the relevant Code of conduct.
8. an Independent Remuneration Panel be set up to consider the allowances for the co-optees and Chairs and Vice Chairs of both Audit and Standards Committees.

9. In accordance with the recommendations of the Interview Panel that Mr S. Wainwright and Mr S. M. Wood be appointed as Independent Persons and receive an annual payment of £800.
10. Members delegate to the Monitoring Officer, in consultation with the Leader and Deputy Leader, authority to do anything necessary to bring the new system into operation or subsequently to improve the operation of the system.
11. Members delegate to the Monitoring Officer, in consultation with the Independent Person, authority to grant dispensations to Members to allow them, in accordance with the legislative requirements, to participate in and vote upon items in which they have a Disclosable Pecuniary Interest or other Interest.

ATTACHMENT:                    Y  
The Bolsover Members' Code of Conduct  
Flow chart showing the outcomes for consideration of complaints  
Draft Standards Committee Terms of Reference

FILE REFERENCE:            *None*  
SOURCE DOCUMENT:        *Localism Act 2011*