

**EXETER CITY COUNCIL
17 JULY 2012**

**STANDARDS COMMITTEE
21 JUNE 2012**

THE REVISED ETHICAL FRAMEWORK

1. PURPOSE OF THE REPORT

1.1 To further update Members on the significant changes to the Standards Regime relating to:

- the Members Code of Conduct,
- declaration of interests and
- arrangements for Standards brought about as a result of the Localism Act 2011("the Act").

1.2 These changes were originally to have been put in place by the 1 April 2012. However, this date was postponed by the Localism Act 2011(Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 ("the Order") laid before Parliament on the 8 June and comes into force on the 1 July 2012.

2. BACKGROUND INFORMATION

2.1 The Localism Bill as originally drafted proposed sweeping away the current ethical framework. It was suggested that Councils would be free to adopt their own voluntary Code of Conduct should they so wish. However, in the light of the views expressed, the Bill was amended and the following provisions were eventually incorporated into the Act which received Royal Assent in November last year:

- Councils are required to have a new or amended Code of Conduct to take effect from 1 July 2012.
- The Code must be based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- The Code must include a requirement for members to register and disclose Pecuniary Interests.
- Councils must put in place a system to deal with any allegation that a member has breached the provisions of the Code.
- Councils must appoint at least one "Independent Person" who must be consulted in relation to complaints before reaching a decision on any allegation made.

3. THE FUTURE OF STANDARDS COMMITTEE

3.1 The current legislation relating to Standards will be repealed with effect from the 1 July 2012, meaning that there will no longer be a legal requirement to retain a statutory Standards Committee.

3.2 Whilst there will no longer be a mandatory requirement for Authorities to have a Standards Committee, Section 27 of the Act imposes a statutory duty to "maintain high standards of conduct by members and co-opted members". The Council will

therefore need to determine whether it wishes to appoint a revised Standards Committee or instead discharge these functions through another committee.

- 3.3 Members have previously shown support for the work of the Standards Committee and therefore it is suggested that the most appropriate way to comply with the Council's legal obligation to maintain high standards of conduct is to re appoint a Standards Committee made up of six councillors. The terms of reference recommended for this Committee are set out in Appendix 1.
- 3.4 It is important for Members to note that whilst the Act introduced a new general duty to promote and maintain high standards of conduct, the Act provides a very limited mechanism or power to enforce those standards since it does not contain any specific power to undertake investigations, conduct hearings or compel Members or officers to attend hearings. The new regime provides an opportunity for local resolution rather than formal investigation, with an emphasis on identifying and resolving underlying issues.
- 3.5 The Council is required to determine its own procedure for dealing with complaints being careful to observe the rules of natural justice. In practice the Act only provided for sanctions for a breach of the Code limited to "naming and shaming" though the Council can agree to formal written warnings, formal censure or removal of a Member from a relevant Committee.

4. REQUIREMENT TO ADOPT A CODE OF CONDUCT

- 4.1 As set out previously, the Localism Bill as originally drafted proposed the removal of the requirement to have a mandatory Code of Conduct. However, this provision was subsequently amended to require Authorities to amend the existing Code of Conduct or to introduce a new Code.
- 4.2 Any Code adopted must be consistent with the seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These are similar to the ten existing general principles.
- 4.3 The Code must include a provision requiring members to register any "Disclosable Pecuniary Interests" the definition for which has only just been set out in Relevant Authorities (Discloseable Pecuniary Interests) Regulations ("the Regulations") which were laid before Parliament on the 8 June and come into force on the 1 July 2012. These are set out in Appendix 2 of this report.
- 4.4 There is no nationally prescribed Code of Conduct. Apart from the obligations set out in paragraphs 4.2 and 4.3 above, Authorities are free to decide what to include in their Code. Full Council must make the decision to adopt the Code and all Standards' matters are not to be Executive functions.
- 4.5 The following organisations have produced a template Code of Conduct:
 - The Local Government Association
 - The Department of Communities and Local Government
 - The National Association of Local Councils.

These template documents are set out as Appendix 3 to this report.

4.6 In addition to the above, discussions between the Monitoring Officers have been held locally in an attempt to adopt a Devon wide Code of Conduct. This has resulted in the draft Code which is set out as Appendix 4 to this report. Some have suggested that a Devon wide Code is the most appropriate way forward given that many of the members are “dual hatted” being both District and County Councillors.

5. REGISTER OF INTEREST

5.1 The Monitoring Officer must establish and maintain a Register of Members’ Interest. This register must be published on the Council’s web site.

5.2 On the whole it is for the Authority to decide what is to be entered in the Register. However, the register must include “Disclosable Pecuniary Interests” as described in paragraph 4.3 to this report.

5.3 As is the current practice, where the Monitoring Officer considers that there is a risk to a Member or some connected person being the subject of violence or intimidation, neither the entry to the Register or the disclosure at the meeting need to be specific as to the nature of the Interest.

6. DISCLOSING INTERESTS AT MEETINGS

6.1 Where a Member is aware that he/she has a Discloseable Pecuniary Interest in a matter to be considered at a meeting where that Member is present but which has yet to be entered in the Register of Interests, he/she must disclose that interest at the meeting.

6.2 Where a member discloses an interest, he/she must not participate in any discussion or vote on the matter at the meeting. Unless the Code adopted by Exeter City Council specifically requires it, there is no legal obligation for a Member to leave the room whilst the matter is being debated.

7. OFFENCE FOR FAILING TO DISCLOSE A PECUNIARY INTEREST

7.1 The Act creates a criminal offence if any person fails, without reasonable excuse, to notify the Monitoring Officer of a Disclosable Pecuniary Interest or participates in any discussion or vote at a meeting where he/she had a disclosable pecuniary interest.

7.2 A Member guilty of an offence may be liable on conviction in the Magistrates Court to a fine not exceeding Level 5 on the standard scale (currently £5,000)

8. BREACHES OF THE CODE OF CONDUCT

8.1 Section 28 of the Act requires Authorities to have in place a procedure under which allegations of failure to comply with the provisions of the Code of Conduct can be considered, investigated (if necessary) and decisions on the allegations taken with or without an investigation or hearing. However, the new regime provides an opportunity for local resolution rather than formal investigation with an emphasis on resolving issues.

8.2 The most significant change brought about by the Act is the removal of the cumbersome and nationally applied framework for dealing with complaints brought against Members. In practice, this means that the current arrangement for dealing with complaints will cease with effect from the 30 June 2012 and this must be

replaced with a new complaints procedure to take effect on the 1 July 2012. A suggested outline for the new complaints procedure is set out as Appendix 5 to this report.

9. APPOINTMENT OF INDEPENDENT PERSON

9.1 The Act removed the requirement to appoint an Independent Member to Chair the Standards Committee and sub committees. Instead, Local Authorities are required, with effect from the 1 July 2012, to appoint an “Independent Person” whose views must be sought and taken into account:

- After a matter has been investigated.
- Where some other form of action is proposed.

A member about whom an allegation has been made also has the right to consult the Independent Person.

9.2 The Independent Person would not be a member of the Council’s Standards Committee although he/she may be invited to attend meetings if necessary.

9.3 A person may not be appointed as an “Independent Person”:

- Where he/she is a relative or a close friend of any member or co-opted member.
- Where he/she was a member or co-opted member of the Authority’s Standards Committee within the last 5 years ending on the 30 June 2013.
- Unless the vacancy for an “Independent Person” has been advertised and the person has completed an application for the vacancy.
- The appointment is approved by a majority of the Authority’s Members.

9.4 Members should note that the Regulations expressly provide that the restriction on the appointment of an Independent Person set out in paragraph 9.3 above shall not apply to any appointment made before the 1 July 2013. In practice, this means the Council may appoint the current Independent members of Standards Committee as the “Independent Person” for the duration of this municipal year.

9.5 Section 7 of the Act requires the appointment of at least one “Independent Person” to provide the assistance set out in paragraph 9.1 above. Given the nature of this new role, it is suggested that Exeter City Council should appoint two Independent Persons to assist with the new regime.

9.6 Given the relaxation of the rule prohibiting previously serving Independent Members from being appointed as an Independent Person during the transitional period, it is recommended that Council approve the appointment of Andrew Mimmack and Professor Brian Kirby (both of whom currently serve as the Independent Members on the Council’s Standards Committee) for the duration of this municipal year.

10. GRANT OF DISPENSATIONS

10.1 The Council may grant a dispensation releasing a Member, who submits such an application to the “Proper Officer ” from participating in a discussion and or voting in a matter where he/she has an Interest.

- 10.2 It is suggested that authority be granted to the Monitoring Officer, in consultation with the Chair of the Standards Committee, to deal with any such application to enable dispensations to be granted at short notice.

RECOMMENDED that:-

- 7.1 The City Council approve the following recommendations:
- 7.1.1 The City Council discharge its obligation to maintain high standards of conduct through a newly appointed Standards Committee, the terms of reference for which are set out in Appendix 1.
 - 7.1.2 The Council adopt the outline procedure for dealing with complaints against members as set out in Appendix 5.
 - 7.1.3 The Council decides which draft Code of Conduct to adopt as set out in Appendix 3 and 4 to this report to come into full force and effect from 1 July 2012.
 - 7.1.4 In consultation with the Chair of Standards Committee to designate the Monitoring Officer as the “Proper Officer” authorised to determine requests from Members for dispensations to take part in the debate and/or vote in a meeting where he/she has an interest to declare.
 - 7.1.5 To authorise the Monitoring Officer, in consultation with the Chair of Standards Committee and the Independent Person, to deal with any complaint received alleging a breach of the Code of Conduct in accordance with the complaints procedure set out in Appendix 5 . This shall include the authority to decide whether an allegation merits investigation.
 - 7.1.6 The Council agrees to appoint two Independent Persons on an annual basis to assist the Standards Committee.
 - 7.1.7 The Council approves the appointment of Andrew Mimmack and Professor Brian Kirby as the Council’s “Independent Persons” for the duration of this municipal year and with effect from 1 July 2012.
- 7.2 That Members note the new obligation placed on them to disclose any Pecuniary Interest they may have with effect form the 1 July 2012.
- 7.3 That Members note the new offence of failing to disclose a Pecuniary Interest where that person fails, without reasonable excuse, to notify the Monitoring Officer of a Disclosable Pecuniary Interest or participates in any discussion or vote at a meeting where he/she had a disclosable pecuniary inter.

CORPORATE MANAGER LEGAL AND MONITORING OFFICER

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report:-

None