

County Council Meeting – 17 July 2012

REPORT OF THE ETHICAL STANDARDS WORKING GROUP

Background

The Localism Act 2011 abolished the 'Standards Board regime' and replaced it with a more locally focused process for regulating Member conduct. The new legislation requires Councils to promote and maintain high standards of conduct by their Members and Co-opted Members, but provides much more flexibility and choice. The introduction of the Act presents the Council with an opportunity to draw up a code of conduct that is both clear and relevant. In March 2012 at a meeting of County Council, the Leader of the Council proposed that a cross-party working group be set up to look at how best to promote high standards of Member conduct after 1 July 2012.

Introduction

Working group background

1. On 15 November 2011 the Localism Act was given Royal Assent. The Act abolishes the 'Standards Board Regime', introduced by the Local Government Act 2000 and replaces it with a more locally focused process for promoting high standards of Member conduct. The most significant changes are summarised below:

The national Code of Conduct has been abolished. However, all local authorities are required to adopt their own Codes, The Council must have a Code of Conduct which, viewed as a whole, is consistent with the following seven principles of public life –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The Council must establish new arrangements under which allegations of Member misconduct can be investigated. In addition, at least one 'Independent Person' must be appointed so that their view can be sought before a decision about an allegation of misconduct is made.

The Act sets out no requirement to have a Standards Committee or for it to include Independent Members. If the Council decides not to have a Standards Committee, alternative mechanisms need to be agreed to continue to meet the statutory requirement to promote and maintain high standards of conduct by Members and Co-opted Members and for dealing with allegations of member misconduct.

The Monitoring Officer must establish and maintain a register of interests of Members and Co-opted Members and ensure that this is available for inspection and published on the Council website.

Members have to declare and register disclosable pecuniary interests (“DPIs”) on election to office. It will now be a criminal offence for Members to deliberately withhold or misrepresent such interests.

Other than DPIs, it is open to the Council to decide what other interests ought to be disclosed. Failure to register these interests would amount to a breach of the Council’s agreed Code of Conduct.

2. On 20 March 2012 the Leader of the Council proposed that a cross-party working group be set up to lead on determining the possible options for a new Member Code of Conduct. The membership of the working group was agreed as follows:
 - David Munro – Member of the Conservative Group (Chairman of the working group)
 - Eber Kington - Member of the Resident’s Association/Independent Group
 - Colin Taylor – Member of the Liberal Democrat Group.

All three Members of the working group sit on the current Standards Committee. On 1 July 2012 the requirement to have a standards committee was abolished through the Localism Act 2011 and this report recommends its cessation.

3. The working group met six times during May, June and July 2012 and focused on addressing the changes listed in paragraph 1 above. Their work programme included consideration of options for a Surrey County Council Member Code of Conduct, reviewing the Member IT Code of Conduct, finalising the content of a new Member/Officer Protocol and the complaints handling process for allegations of misconduct.

Findings

Code of Conduct (the Code)

4. Members of the working group sought initial feedback from their respective groups and there appeared to be a broad cross-party consensus that the Member Code of Conduct should be simple and accessible, referring to other documents where possible rather than duplicating standards relating to conduct set down elsewhere.
5. The Department for Communities and Local Government (DCLG) has published an ‘illustrative text’ of a code dealing with the conduct expected of members and co-opted members. The Monitoring Officer presented a discussion paper on a local code of conduct to the working group on 16 May 2012. Members were asked to consider several models of Code, including an expanded version of the DCLG Code, a draft Code produced by the Local Government Association and an annotated version of a Code prepared by the Monitoring Officer in January 2012.
6. The working group agreed that the DCLG Code provided a good basis for a Surrey County Council Member Code of Conduct. Members agreed that it was preferable to use the wording suggested by the government in the illustrative code as a basis for

the Council's Code but carefully considered whether any additional points should be incorporated.

7. It was noted that under the new legislation, a Member did not have to be physically excluded from a meeting in which the decision or discussion of an item in which they had a DPI took place. However, the working group agreed that it would be sensible to continue with a restriction similar to that currently in place for Members with prejudicial interests. This could be effected through a change to Standing Orders.
8. Members considered that further interests should be registered and agreed that gifts and hospitality should be recorded. It was unanimously agreed that the current lower limit (£25) was no longer appropriate. Members felt that £100 was a more realistic sum and agreed that this should be defined in the boxed text at the end of the Code. It was agreed that no further requirements about interests would be included in the Code at this stage. Members agreed to add a footnote to the boxed text to make Members aware that acting on a matter where they had a conflict of interests could be considered a breach of the Code of Conduct.
9. To ensure that the Code is a simple and high-level document, the working group proposed that it should refer to the more detailed codes and protocols that already exist. In particular, it was agreed that the Code would require Members to comply with the Member/Officer Protocol and the Surrey Code of Best Practice in Planning Procedures. Members agreed that the Code should not include any specific restrictions about the personal use of the Council's property, facilities or resources; however, it would refer to the amended IT Code
10. The working group had a detailed discussion about the current IT and Information Security requirements that Members were asked to sign. It was found that a large number of Members had not signed up to the Code and the working group therefore decided to review whether it remained realistic, relevant and appropriate. An amended version of the Code is included at Annex B to this report for approval. The main change to the IT Code is that limited personal use of IT equipment would now be permitted, with possible further restrictions during election periods.
11. The Working Group accepted that, historically, the most frequent complaint received about individual Members has been that they have failed to treat someone with respect. The working group discussed how this could be addressed in the Code, recognising concerns that 'respect' could be subjective. After considerable debate, Members recommended that there should be no specific reference to treating people with respect, but specific reference should be made to the Member/Officer Protocol. The Protocol includes the requirement to treat officers with mutual dignity, trust and courtesy and failure to do so could be considered a breach.

Conclusion and recommendation

12. The working group were satisfied that the DCLG illustrative text provided a good framework upon which to build the Surrey County Council Member Code of Conduct. It was concluded that the Code would mirror the DCLG Code, with some amendments proposed so that it reflected the Surrey County Council culture accurately.

Therefore, the working group recommend:

Recommendation 1:

That the proposed Member Code of Conduct (Annex A) be commended to County Council for adoption and inclusion into the Constitution.

Recommendation 2:

That the proposed IT Code for Members (Annex B) be commended to County Council for adoption.

Member/Officer Protocol (the Protocol)

13. The working group considered proposed amendments to the Member/Officer Protocol at their meeting on 1 June 2012.

Conclusion and recommendation

14. After proper debate and careful consideration of the points put forward by Groups on the Protocol, the working group agreed on a final draft of the Member/Officer Protocol for commendation to Council.

Recommendation 3:

That the revised Member/Officer Protocol (Annex C) be commended to County Council for adoption and inclusion into the Constitution.

Complaints Handling Process

15. Until now, the process for handling complaints about Members has been dictated by Statutory Regulations and Guidance. The current Standards Committee set up two Sub-Committees, chaired by Independent Representatives. For a complaint to be considered it needed to be made in writing to the Monitoring Officer who would assess whether it should be passed on to a Sub-Committee. Various stages of Sub-Committee meetings existed within the process (assessment, review and determination). The Localism Act 2011, means that the Council can now determine how it will handle complaints about Member misconduct through local arrangements.
16. The Act requires that the Council adopt 'arrangements' for dealing with complaints of a breach of the Code of conduct by Members and such complaints must be dealt with in accordance with such 'arrangements'. The Act repealed the requirement for separate assessment, review and determination Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. It is no longer possible to have independent members with voting rights on Standards Committees, however, the Act requires the Council to appoint at least one Independent Person whose views must be sought before a final decision is taken on an allegation that has been investigated.

17. At their meeting on 16 May 2012, the working group discussed a paper on dealing with misconduct complaints prepared by the Monitoring Officer. Members were of the view that there should be an initial assessment by the Monitoring Officer when a complaint is received, to ensure that complaints that fall outside the Code of Conduct or are minor in nature are filtered out. The working group felt that the Monitoring Officer should be authorised to decide independently whether a complaint constituted a possible breach, however, if necessary he or she could consult the Chairman of the Council (as Chairman of the Member Conduct Panel, please see following paragraphs), before reaching a final decision.
18. It was noted that, under the current arrangements, an investigation was always carried out before a hearing of the complaint was convened. The working group debated whether this was cost effective, as investigations could often take up a considerable amount of officer time. On balance, it was felt that an investigation would be necessary before any panel be called to consider the complaint, however, the complaints handling process would be drafted to ensure that an investigation was proportionate to the case: therefore, a possible serious or complex breach of the Code would warrant a more detailed investigation.
19. The working group did not wish to recommend that the Standards Committee continue in its current or any form. Instead, the working group recommend that a Member Conduct Panel be appointed which would be politically balanced but which, in line with the legislation, would not include any independent representatives. Feedback from Groups had indicated that some Members felt that, when a Panel was convened to consider a complaint, it should not include Members from the same political group as the subject Member. This view was not accepted by the working group on the basis that members of the Member Conduct Panel would be selected for their ability to act impartially and because Panel Members would recuse themselves from a hearing if they were at risk of bias or the perception of bias. It is proposed that the Chairman or Vice Chairman of the Council should always chair such a panel comprising three Members unless in the circumstances described in paragraph 23 below.
20. The working group felt that referral to the Member Conduct Panel should be a last resort. In all cases, informal resolution should be sought at the earliest possible stage. Therefore, if the Monitoring Officer concludes that there has been a possible breach of the Code, an informal resolution (such as a letter of an apology) may be recommended before an investigation is considered. The working group agreed that the decision to undertake an investigation should be ultimately taken by the Monitoring Officer in consultation with the Chairman of the Member Conduct Panel.
21. Where informal resolution is recommended, Members felt that both the complainant and the Member should have the right to decline the informal resolution and request that the complaint be investigated, but, where such a request was made, the decision whether to commission an investigation would rest with the Independent Person, whose decision on this point would be final.
22. The working group felt that, where an investigation concluded that there had not been a breach of the Code of Conduct, the investigation report would be discussed with the Independent Person and the Chairman of the Member Conduct Panel, before a decision was reached on whether the complaint should be referred to a hearing. If a hearing were not considered appropriate, no further action would be taken, other than informing the parties.

23. Where a decision is made to call a hearing, the working group concluded that a Panel of 3 Members (drawn from the Member Conduct Panel) should be convened. The Chairman of that Panel would be either the Chairman or Vice Chairman of the Council, unless they either are unavailable or otherwise unable to act, in which case the members of the Panel would elect a Chairman from amongst their number at the beginning of the hearing.
24. The working group considered that the following possible outcomes should be considered:
 - a. No breach of the Code of Conduct
 - b. No further action
 - c. A statement of censure
 - d. Recommendation to Group Leader
 - e. Report to CouncilMore far-reaching sanctions such as suspension are not permitted under the new regulations.
25. The Localism Act 2011 states that the Independent Person must be consulted before a decision is made with regards to Member conduct. Therefore, the working group propose that the findings of a Member Conduct Panel are discussed with the Independent Person whose views will be taken into account before a final decision on the breach and any sanction is made.
26. The working group discussed in detail whether there should be an appeal process for Members and complainants who do not agree with an outcome. It was agreed that the complainant would not have a right to appeal. Similarly, where a Member is found to have breached the Code, the working group were confident that the revised process would eliminate the need for an appeal process on finding. However, it is recommended that Members be able to appeal to a second Member Conduct Panel in relation to the sanction imposed only; the second Panel would review the sanction imposed, without conducting a further hearing.
27. Member Conduct Panels would only be convened as and when required. The working group did not conclude that a Standards Committee should continue; however recommend that responsibility for other functions within the Standards Committee remit be reallocated as detailed in Annex D. They noted that this would require amendments to the Constitution
28. The Working Group concluded that, subject to any overriding legal requirements, information regarding individual complaints, informal resolution discussions and investigations would be kept confidential by those involved in administering and deciding complaints on behalf of the Council. An informal resolution may however include an agreement regarding publicity. Once a Member Conduct Panel is convened the Panel would decide whether to conduct a hearing in public. The Member Conduct Panel will publish all findings of a breach of the Code of Conduct. Where no breach is found the Member who has been subject to the allegations may choose whether or not he or she wishes the Panel to publicise its decision. It should be noted that the identity of the complainant would normally be made known to the Member at the beginning of the process. In exceptional circumstances the Monitoring Officer, in consultation with the Independent Person could withhold the complainant's identity.

Conclusion and Recommendations

29. The working group considered at length the potential arrangements for the future handling of allegations of Member misconduct. The working group are recommending that the Standards Committee will cease to exist (on the adoption by the Council of these new arrangements). It was concluded that a revised process, as detailed above, be introduced for handling complaints against Member conduct. A guidance note and flowchart demonstrating the process is included at **Annex E**.

Recommendation 4:

The revised arrangements for dealing with standards allegations under the Localism Act 2011, be approved and adopted.

Recommendation 5:

A Member Conduct Panel be appointed

Recommendation 6:

The Monitoring Officer be tasked to make amendments to the Council's Constitution and other relevant documents, to give effect to the proposals set out above.

Independent Person

30. Section 28 of the Localism Act 2011 requires that at least one Independent Person be appointed by the authority. The Independent Person's views must be sought and taken into account before a decision on an investigated allegation is taken. The current Independent Members on the Standards Committee are not eligible to be appointed as the Independent Person.
31. The working group have asked the Monitoring Officer to draft a job specification and advertise for an Independent Person whose role will be:
- To be consulted as appropriate at the stages in the process set out above
 - To be consulted on the findings of a Member Conduct Panel before a recommendation is finalised
 - To be available for consultation by any Member or Co-Opted Member who has been subject to a complaint
32. The working group recommend that the Independent Person should be a person of standing with experience of working with large organisations. The Independent Person should also not be an active member of a political party. The working group consider that it is important to break away from the previous regime and therefore are not specifically looking for candidates who have previously acted as independent members on other authorities' standards committees. The working group feel that in order to attract the right calibre of candidate and maintain their commitment, a standing annual allowance should be remunerated. In the interim it is recommended that if an Independent Person is required, the Member Conduct Panel would be able to consult an Independent Person appointed by a Surrey District or Borough Council.

Next Steps

33. A recommendation will be made to the County Council in due course regarding the outcome of the recruitment campaign for an Independent Person.

Conclusions

Financial implications:

There are no direct financial implications.

Equalities implications

There are no direct equalities implications.

Risk Management implications

The proposed new arrangements have been developed with consideration given to the code of conduct and standards regime as a means of dealing with complaints before they escalate to litigation.

Recommendations

34. Members are asked to accept the recommendations of the Ethical Standards Working Group:
1. That the proposed Member Code of Conduct (Annex A) be commended to County Council for adoption and inclusion into the Constitution.
 2. That the proposed IT Code for Members (Annex B) be commended to County Council for adoption.
 3. That the revised Member/Officer Protocol (Annex C) be commended to County Council for adoption and inclusion into the Constitution.
 4. The revised arrangements for dealing with standards allegations under the Localism Act 2011, be approved and adopted.
 5. A Member Conduct Panel be appointed
 6. The Monitoring Officer be tasked to make amendments to the Council's Constitution and other relevant documents, to give effect to the proposals set out above.

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