

**MONITORING OFFICER REPORT TO COUNCIL****CHANGES TO THE STANDARDS REGIME****KEY ISSUE/DECISION:**

This report is intended to inform Members' consideration of all the decisions the Council needs to make to implement a new ethical standards regime in Surrey. It should be read alongside the report arising from the detailed work of the Ethical Standards Working Group, set up to make recommendations to Council. It provides some detail of the new legal framework, reports the steps already taken toward implementation and invites the Council to agree changes to the Constitution and a process for appointing to the new role of "Independent Person."

The recommendations in this report supplement those included in the Ethical Standards Working Group's report.

**CONTEXT**

1. The new regime has been introduced by the Localism Act 2011 and the Statutory Regulations subordinate to it. As a result, the Standards Board was abolished on 1 April 2012 and the First Tier Tribunal no longer hears cases relating to standards and conduct in local government. Any complaints currently undergoing investigation locally are transferred to the new regime and will be decided in accordance with the new complaint handling arrangements to be put in place by the Council.
2. With effect from 1 July 2012, Councils are no longer required to have a standards committee. If they are retained, independent members of standards committees are no longer able to be voting members. The working group has not recommended continuation of a standards committee and this report therefore includes recommendations about changes to the Constitution to effect this.
3. Whilst the Localism Act provides a more flexible regime, it also places new or different legal requirements on the Council, individual Members and the Monitoring Officer which are set out below.

**REQUIREMENTS ON THE COUNCIL****Promoting and Maintaining High Standards of Conduct**

4. Section 27 of the Localism Act 2012 places a statutory duty on the Council as a whole to promote and maintain high standards of conduct by its Members and Co-opted Members. Over the last few months a cross party working group have looked at how the Council may wish to achieve this and its report is included in the agenda as part of this item. In considering that report and agreeing its new arrangements, Member should bear in mind the overarching duty, imposed by the Act.

## **Code of Conduct**

5. The Council must have a Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. A Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
6. The Code must also include provisions which the Council considers appropriate with regard to the registration and disclosure of pecuniary and other interests.
7. The Council may revise its existing, nationally imposed, Code (set out in the Constitution) or adopt a Code that replaces it. Members will have read the report of the Ethical Standards Working Group, which recommends a new local code to the Council. Once adopted, this would replace the current Code which Members undertook to observe when they were elected to this Council.

## **Arrangements to investigate and deal with allegations**

8. The Council must also agree arrangements to deal with any complaints that Members have failed to abide by the adopted Code. The Act specifies that these arrangements must cover how allegations will be investigated and how they will be decided. The Working Group has recommended arrangements, which meet that legal requirement, in its report to Council.

## **Appointment of Independent Person**

9. The  
Act also requires the Council to appoint "at least one independent person" whose views must be sought after an investigation into a complaint has been conducted and before a decision on it is made. It also allows Members who have had an allegation made against them to seek the views of the independent person if they wish. The Working Group has recommended how the independent person should be involved in arrangements to handle complaints. The Act prevents councillors, officers or their relatives or friends from being appointed as an independent person and provides for the recruitment process to be publicised and transparent. Appointment of one or more independent persons must be approved by the majority of Members of the Council.
10. In  
order to facilitate the appointment of an Independent Person, a person specification and role profile for the Independent Person has been drafted and will be advertised shortly via the County Council's website. The advert reflects the Working Group's views that the Independent Person should be a person of standing with experience of working with large organisations but does not necessarily need to have been involved in the previous Standards regime.

11. If the Council agrees the arrangements proposed by the Working Group, members of the new Member Conduct Panel will be expected to work with and have confidence in any appointed Independent Person and so it seems desirable that members of the Panel should be involved in the recruitment of the Independent Person. Therefore it is recommended that, in order to meet the legal requirement to appoint at least one independent person, the County Council delegates selection to a panel of 3 Members, nominated by Group Leaders from within the membership of the new Member Conduct Panel.

12. The selection panel, supported by the Monitoring Officer, would then shortlist and interview applicants for the role of Independent Person. The final appointment must be approved by a majority of the Members of the Council.

### **Changes to the Constitution**

13. In order to implement the recommendations of the Working Group and to address the statutory changes, a number of changes will be required to the Constitution. These proposed changes are described throughout this report and set out in full in its appendix.

14. Cou ncil is asked to agree to the proposed changes set out in Appendix A, to give effect to the new regime, including discontinuing the Standards Committee and creating a new Member Conduct Panel and to give the requisite delegated powers to the Chairman of the Council, Audit and Governance Committee, the Chief Executive and the Monitoring Officer.

15. In the event that further changes are required to give effect to decisions made today the Council is asked to delegate these further changes in the Constitution to the Monitoring Officer in consultation with the Chairman of the Council.

## **WHAT THE LOCALISM ACT REQUIRES OF INDIVIDUAL MEMBERS**

### **The Code of Conduct**

16. Mem bers are expected to conduct themselves in accordance with the principles of public life set out in the Act and to abide by the Code of Conduct the Council adopts. Once a new Code has been adopted, the previous Code and undertaking given by Members will cease to apply.

### **Disclosable Pecuniary Interests**

17. Secti on 30 of the Act requires Members to notify the Monitoring Officer of any disclosable pecuniary interests they have and, in addition, provided they are aware of them ,the disclosable pecuniary interests of their spouses, civil partners (or anyone they live with as if they were a spouse or civil partner). Any interest

notified to the Monitoring Officer will be placed on the register referred to in paragraph 27.

18. The  
Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 came into effect on 1 July 2012. These Regulations specify the interests which Members must disclose. Broadly they fall into the following categories:
- Any employment, office, trade, profession or vocation carried on for profit or gain
  - Sponsorship, including election expenses paid by a political party
  - Contracts with the Council
  - Interests in land in Surrey, licenses and corporate tenancies
  - Securities, where Members own 1% or more of the shareholding in a company, or where the nominal value of the security exceeds £25,000
19. Mem  
bers will note that a number of previously registerable interests are no longer legally required, for example councillors no longer need to declare any voluntary or charitable roles they have, such as trusteeships or school governorships.
20. Apar  
t from declaring such interests on the register a Member must by law disclose a disclosable pecuniary interest of which they are aware at a meeting, or when taking an individual member decision. If the interest is not already registered the Member must register it within 28 days. The Member is prohibited from participating in discussion or voting on any matter relating to his or her interest, or if acting alone, from taking any steps in relation to the matter. If the Council agrees the approach proposed by the working group, the Member must also leave the room or chamber during any discussion or decision on the item in which they have the interest – this is included in the changes to Standing Orders (SO62) contained in Appendix 1.
21. Mem  
bers will wish to note the position regarding sensitive interests and dispensations. A sensitive interest can be excluded from the register, if both the Member and the Monitoring Officer consider 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.*”
22. A  
sensitive interest would not be disclosed publicly on the register, but a Member would be required by law to declare its existence (without giving details) and withdraw from any meeting at which it related to a matter under discussion.
23. Secti  
on 33 of the Act empowers the Council, on written request, to grant dispensation for up to four years for a Member to be able to participate in or vote at a meeting when they have a disclosable pecuniary interest, either because the authority considers that, if it is not granted, the business in question is likely to be impeded; or that all members of the Cabinet would otherwise be unable to participate in the business of the Cabinet; or that they consider it appropriate to grant a dispensation for other reasons. The granting of dispensations is not a Cabinet function and the working group has recommended that this is delegated to the

Audit and Governance Committee. This is included in the proposed amendments to the Scheme of Delegation (Section 2, paragraph 6.9 *Audit and Governance Committee Terms of Reference*) contained in Appendix 1.

24. Secti  
on 34 of the Act creates a criminal offence where a Member or Co-opted Member fails, without reasonable excuse to comply with the requirements to register and/or disclose pecuniary interests or participates in business of the Council in which they have a disclosable pecuniary interest. A magistrates court can fine a guilty councillor up to level 5 (currently £5,000) and disqualify them for up to five years. The prosecution must be brought on behalf of the Director of Public Prosecutions (DPP) and must be brought within 12 months of the DPP having evidence to warrant prosecution and within three years of the offence being committed.

### **Other disclosable interests**

25. The  
Council may at its own discretion require Members to register other interests in addition to those set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations. The Working Group has recommended that Members be required to register and disclose gifts or hospitality with a value of £100 or above which they have been offered in their role as a councillor. Guidance on recording these will be circulated to Members in due course.
26. A  
failure to disclose a locally agreed interest such as gifts and hospitality would amount to a breach of the Council's Code of Conduct but would not constitute a criminal offence.

## **THE DUTIES IMPOSED ON THE MONITORING OFFICER**

### **The Register of Interests**

27. Secti  
on 29 of the Act requires that, with effect from 1 July 2012, the Monitoring Officer establish and maintain a new register of Members' and Co-opted Members' interests, make the register available for public inspection and publish it on the Council's website. The register must contain the disclosable pecuniary interests of members, dealt with in paragraph 18 above and can include any other interests that the County Council agrees should be registered.
28. Purs  
uant to this statutory requirement, the Monitoring Officer has transferred relevant entries from the current register into the new format and asked every Member to check their accuracy. Members have not been required to include the interests of spouses/partners on the register. Council has the option of including this as an immediate requirement by adding it to the new Code of Conduct, alternatively Members will only be required to register these if they are re-elected to the Council in 2013 or if, before then, a partner's interest arises at a meeting or otherwise in connection with the business of the Council.

29. The Monitoring Officer will update the register to implement any decision by Council regarding immediate registration of spouses'/ partners' interests or other interests to be included in a register.

**Politically Restricted Posts**

30. Until 1 July 2012, the requirement to consider any applications regarding political restrictions on an officer post has been a matter for the Standards Committee. The Localism Act 2011 (Commencement No 6 and Transitional Savings and Transitory Provisions) Order 2012 transfers this power to the Head of Paid Service (Chief Executive) who must consult the Monitoring Officer before making a decision of the application.

## **RECOMMENDATIONS:**

In order to give effect to the Ethical Standards Working Group's recommendations, the County Council agree to:

1. abolish the current Standards Committee with immediate effect and establish a Member Conduct Panel of 10 Members, politically proportionate to the Council (7 Conservatives, 2 Liberal Democrats and 1 Residents' Association/Independent.)
2. authorise the Chief Executive to appoint Members to serve on the Member Conduct Panel and make changes to the membership of the Panel as necessary during the council year in accordance with the wishes of the political groups.
3. delegate selection of an Independent Person (as defined by the Localism Act 2011) to a panel of 3 Members, comprising a member from each group, nominated by Group Leaders, from within the membership of the Member Conduct Panel.
4. until an Independent Person is appointed by the Council, authorise the Monitoring Officer to explore identifying an appropriate interim Independent Person, appointed by a Surrey District or Borough Council to fulfil the role should the need arise.
5. approve the proposed changes to the Constitution set out in Appendix 1 and delegate any further Constitutional changes arising from decisions made by the Council in relation to the Standards Regime at this meeting to the Monitoring Officer, in consultation with the Chairman of the Council

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### **Lead/Contact Officer:**

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### **Sources/background papers:**

Localism Act 2011  
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012  
The Localism Act 2011 (Commencement No 6 and Transitional Savings and Transitory Provisions) Order 2012

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