



Audit & Governance Committee  
7 December 2015

**Ethical Standards Annual Review**

**Purpose of the report:**

To enable the Committee to monitor the operation of the Members' Code of Conduct over the last 12 months and to consider what advice and guidance about ethical standards it recommends to be offered to Members in the next 12 months.

**Recommendations:**

That the Committee notes the report and considers:

- What (if any) further advice, guidance and training should be offered to Members over the next year, or any longer period, and
- Whether the current frequency of reports enables it to effectively monitor the operation of the Code of Conduct.

**Introduction:**

2. The Localism Act 2011 places the Council under a statutory duty to promote and maintain high standards of conduct by its Members and co-opted Members
3. The Council has a Code of Conduct governing elected and co-opted Members' conduct, when acting in those capacities. The council's Code of Conduct, viewed as a whole is consistent with the following seven principles:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership

The Code also includes provisions for the registration and disclosure of pecuniary and other interests. No revisions have been made to the Code since it was adopted by the Council in 2012.

4. Members are required to register "disclosable pecuniary interests" with the Monitoring Officer and these must be published on the Council's website.

5. 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.
6. The Council has delegated to the Audit and Governance Committee the roles of:
  - monitoring the operation of the Members’ Code of Conduct and;
  - promoting advice, guidance and training on matters relating to the Code of Conduct.
7. The Committee is also responsible for granting dispensation to Members relating to their disclosable pecuniary interests. In April 2015 the Committee granted a dispensation to Graham Ellwood to enable him to allocate funding to George Abbot School. No other application for a dispensation has been received in the period covered by this report.

### **The Code of Conduct**

8. At the Council meeting of 17 July 2012, Members agreed that they wanted to adopt a simple, high level code. The current Members’ Code of Conduct is based on the Department of Communities and Local Government (“DCLG”) “illustrative” text of a Code of Conduct for Members and is annexed to this report for ease of reference.
9. The Code does however make links to other Council protocols, including the Member/ Officer Protocol which requires both staff and councillors to treat each other with dignity, trust and courtesy.

### **Independent Person**

10. The Act requires the appointment of at least once independent person who cannot be a councillor, officer or a relative or friend of any one of them. Professor Michael Joy OBE. Professor Joy was appointed by Council for a term of four years from December 2012.

### **Arrangements for receiving and handling complaints**

11. The Act requires the Council to adopt arrangements for dealing with complaints of a breach of the Members’ Code of Conduct. Any such complaints must be dealt with in accordance with those arrangements. Before any final decision is reached on a complaint that has been investigated, the Independent Person’s views must be sought. A copy of the Council’s arrangements is annexed to this report. These arrangements are designed to promote informal resolution rather than an adversarial approach, the latter tends to result in long and expensive investigations, some of which have been disproportionate to the seriousness of the complaint.

### **Register of Pecuniary Interests**

12. All Members are required to notify the Monitoring Officer, within 28 days of taking office, of any disclosable pecuniary interests they have, including those of a spouse, civil partner or someone with whom the member is living as husband and wife or as civil partner. All Surrey County Council Members have completed entries and the Council’s register is published online in accordance with legal requirements.

13. Each elected Member's entry on the Register of Interests is now easily accessible on their individual page on the Council's website. Co-opted members have also registered their interests. These are not available on the Council's website, but can be inspected at the Council's offices.
14. An Audit of Members Interests in 2015 recommended that the Council consider extending the interests it requires its Members to disclose to include certain non – pecuniary interests. That recommendation has been referred to the Constitution Review Group for consideration.
15. The Monitoring Officer has noticed an increasing trend for Members to request that their home address is excluded from the published register of interests, often because of concerns relating to fear of crime. The Localism Act allows sensitive interests to be excluded from publication. However the law in relation to this is quite prescriptive, requiring both the Member concerned and the Monitoring Officer to consider that disclosure of the details of the interest could lead to the member or a person connected with them being subject to violence or intimidation. In the majority of requests that is not the case.

#### Training and Guidance for Members

16. Comprehensive guidance and training were provided for every new and returning councillor in 2013. On 22 September 2015 a reminder of the need to disclose and guidance relating to the registering of gifts and hospitality was emailed to all Members. Refresher training sessions about interests are being prepared by officers and two dates have been arranged, the first on 14 December 2015 and a second on 1 February 2016.

#### Code of Conduct Complaints

17. The table below shows the number of complaints received by the Monitoring Officer, broken down by three month periods since her last report to this Committee (a period of 15 months). There have been no complaints alleging that a Member has failed to disclose or declare a pecuniary interest (this being a breach of the code which could result in criminal prosecution of the Member).

<b>Three months ending</b>	<b>Number of Complaints</b>
October 2014	1
January 2015	9
April 2015	0
July 2015	5
October 2015	2
<b>Totals</b>	<b>17</b>

The number of complaints received is comparable with the 2013/14 year, when 14 complaints were received in a 12 month period.

18. Broken down into broad headings the reasons given for complaints about members this year were as follows
  - Failure to answer correspondence - 5 complaints
  - Dissatisfaction with a council service – 2 complaints
  - Comments made by the Member directly to the complainant – 3 complaints
  - Comments made by a Member during debate in a Cabinet or Committee meeting – 2 complaints
  - Breach of data protection – 1 complaint

- Miscellaneous dissatisfaction with way Member engaged with the complainant – 4 complaints
19. The Monitoring Officer is of the view that a number of the complainants wish to seek redress in connection with their dissatisfaction about the way a Member has personally dealt with them. Under the previous national Code of Conduct such complaints may have required further action if they could have amounted to “failure to treat with respect”. The Council took a decision not to introduce a similar provision into the local code it adopted in 2012. It would also appear that some complaints may be triggered by policy decisions which the complainant perceives as impacting unfavourably on them.
  20. An initial sift is applied to complaints to decide whether, if proven, the subject matter of the complaint would amount to a breach of the Code of Conduct. During the period one complaint was considered for action. After consultation with the Chairman of the Member Conduct Panel this was dealt with by informal resolution—resulting in the Member apologising to the complainant.
  21. In one case the complainant requested that the Monitoring Officer put any action relating to the complaint on hold and has not requested that it be resumed. All other complaints have been closed as a result of an initial assessment that the subject matter of the complaint, if proven, would not amount to a breach of the Code.
  22. One complaint, received in July 2014, was subject to formal investigation and subsequently concluded during the period monitored in this report. The investigator found that there was no evidence of a breach of the Code and, following consultation with the Chairman of the Member Conduct Panel and the Independent Person the matter was closed.

#### **Risk Management Implications**

23. The Council’s Code of Conduct, Register of Interests and arrangements for dealing with complaints are statutory requirements and key elements of good governance. A lack of an appropriate Code of Conduct and/or robust and objective procedures for handling complaints could diminish public confidence in members’ transparency about their personal interests and in decisions being taken solely in the public interest. An unduly onerous or complicated Code or procedures for handling complaints would diminish Member confidence in a fair approach and could hinder their decision making. Guidance and training is intended to assist Members in observing the Code and so mitigate the risk of complaints about Members

#### **Financial and value for money implications**

24. An external investigation of a complaint costs in the region of £5,000. In the last year one investigation was dealt with by an external investigator.

#### **Equalities and Diversity Implications**

25. There are no obvious equalities and diversity implications to which the Committee needs to pay due regard.

#### **Next steps:**

The Monitoring Officer will report any recommendations from this Committee to the Member Conduct Panel and will keep the Independent Person informed.

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**Background papers:** None.

## Appendix 1

### **Surrey County Council Member Code of Conduct**

As a member or co-opted member of Surrey County Council you shall have regard to the following principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

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

1. 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.
2. 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.
3. 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 and must be impartial and seen to be impartial.
4. You must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of Surrey County Council and should be prepared to give reasons for those decisions and actions.
6. You will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the commercial interests of the Council or another person or organisation. This information must not be revealed without proper authority.
7. You should be mindful of the requirement to declare and record any disclosable pecuniary interests in a manner conforming with the procedures set out in the box below.
8. You must, when using or authorising the use by others of the resources of your 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. For guidelines on the personal use of Council IT resources by Members, please refer to the IT Code.
9. 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.
10. In addition to compliance with the Member Code of Conduct, you are expected to comply with the following codes:
  - a. Member/Officer Protocol
  - b. Planning Code of Best Practice

### Registering and declaring pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify the 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 the authority's monitoring officer of any gift or hospitality with a value of £100 or above which you have been offered (whether accepted or not).

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'<sup>1</sup>

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 the authority places on your involvement in matters where you have a pecuniary interest.<sup>2</sup>

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the 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.

<sup>2</sup> There are currently no additional restrictions placed by the authority, however, Members should be aware that adverse interests could be considered as transcending the Code of Conduct.

**SURREY COUNTY COUNCIL**

**Arrangements for dealing with standards allegations under the Localism Act 2011**

**1. Context**

- 1.1. Surrey County Council has 80 elected Councillors known as “Members” The Council is committed to promoting and maintaining high standards of conduct amongst its Members and has adopted a Code of Conduct setting out the conduct it expects of its Members and Co-opted Members as they carry out that role.
- 1.2. These are the Council’s arrangements for dealing with any complaint it receives, alleging that an elected or co-opted Member of Surrey County Council has failed to comply with its Code of Conduct. These arrangements will form the basis for investigating and deciding any such complaints.
- 1.3. The Council will appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on any allegation which it has decided should be investigated. The Council may also seek the view of the Independent Person at any other stage it chooses and a Member against whom an allegation as been made can also consult the Independent Person.

**2. The Code of Conduct**

- 2.1. A copy of the Council’s Code of Conduct for Members is set out below. It is also available for inspection on the Council’s website and on request from Democratic Services [*Please phone 020 8 5419 122 to speak to somebody in Democratic Services*].
- 2.2. The Code applies to Members when they go about the work of the Council or their role as a Member. The Council will not investigate complaints relating to a Member’s private life.

**3. Making a complaint**

- 3.1. Anyone wishing to make a complaint about the behaviour of a Surrey County Councillor (“Member”), should write or email to-

The Monitoring Officer  
Surrey County Council  
County Hall  
Kingston Upon Thames  
KT1 2DN  
Or email [monitoringofficer@surreycc.gov.uk](mailto:monitoringofficer@surreycc.gov.uk)

- 3.2. The Monitoring Officer is the member of the Council’s staff who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the system in respect of complaints of member misconduct. 3.3 Only written complaints will be investigated and the Council will require a name and a contact address or email address to acknowledge receipt of the complaint and keep the complainant informed of its progress. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The Monitoring Officer will disclose the name of the complainant to the Member unless specifically asked to withhold it. Only in very exceptional cases will the Council be able to progress a complaint to an investigation without disclosing the identity of the complainant to the Member.

#### **4. How a complaint is resolved**

- 4.1. The Monitoring Officer will review every complaint received. Where they are of the view that your complaint, if proven, would not amount to a breach of the Members Code of Conduct they will notify you of this and will not progress the matter further.
- 4.2. Wherever possible the Monitoring Officer will seek to resolve your complaint through informal resolution. Informal resolution may avoid the need for a formal investigation and could, for example, consist of the Member accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Council. The Monitoring Officer will consult the Chairman of the Member Conduct Panel before recommending informal resolution and will notify you and the Member concerned of any recommendation and how that will be progressed.

#### **5. When a complaint will be investigated**

- 5.1. On some occasions informal resolution will not be possible, because one of the parties does not agree to cooperate with an informal process. If this happens the Monitoring Officer will seek a ruling from the Independent Person, who will decide whether the matter proceeds to an investigation or progresses no further. In order to inform that decision the Monitoring Officer will disclose information to the Independent Person, including details of the complaint, steps taken to achieve informal resolution and why this has not been successful. The complainant and the Member will be notified of the outcome.
- 5.2. On some occasions the Monitoring Officer may consider that the conduct alleged, if proved to have occurred, would amount to a breach of the Members Code of Conduct and would not be capable of informal resolution. If this is the case, after consultation with the Chairman of the Member Conduct Panel, the Monitoring Officer will decide whether the complaint merits formal investigation. In making that decision the Monitoring Officer will take into account both the seriousness of the alleged breach and the information provided in support of the complaint. Where the Monitoring Officer requires additional information in order to come to a decision, they may contact either the complainant or the Member to request that information.
- 5.3. If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

#### **6. How is the investigation conducted?**

- 6.1. If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. This may be a member of the Council's staff or an external investigator. The Investigating Officer will decide whether to speak to the complainant and to any other witnesses and may collect written evidence, such as correspondence, or minutes of meetings.
- 6.2. The Investigating Officer will contact the Member and provide them with a copy of the complaint, and ask the Member to provide his/her explanation of events, and to identify what documents the Investigating Officer needs to see and anyone they should interview. In very exceptional cases, where the Monitoring Officer, after consulting the Independent Person, considers that disclosing details of the complaint to the Member might prejudice the investigation, these will be withheld from the Member until the investigation has progressed sufficiently.

6.3. At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any inaccuracies in the report and to comment on their findings. Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6.4. The investigation and the Investigating Officer's report will be kept confidential at this stage.

**7. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will send a copy of the Investigating Officer's report to the Chairman of the Member Conduct Panel and to the Independent Person and seek their views on whether to convene a member Conduct Hearing Panel. Where a hearing is inappropriate the Monitoring Officer will write to the parties, notifying them that they are satisfied that no further action is required. The Monitoring Officer will send them both a copy of the Investigating Officer's final report, which will no longer be confidential at this point.

**8. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will arrange for the Member Conduct Panel to hold a meeting, within three months of the Investigator's final report being issued, so that it can take a decision on the complaint.

8.1. The Monitoring Officer will invite the Member to reply in writing to the Investigation Officer's report, in particular to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Member will be invited to give a view on whether the Panel should meet in public or in private. The Chairman of the Member Conduct Panel will set a date for the hearing and may issue directions as to the manner in which the hearing will be conducted, including whether or not the Member Conduct Panel will meet in public or private.

8.2. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct.

8.3. The Member will also have an opportunity to give evidence, to call witnesses and to make representations to the Member Conduct Panel as to why they consider that they did not fail to comply with the Code of Conduct.

8.4. After hearing from all the parties the Member Conduct Panel may conclude either:

- that the Member did not fail to comply with the Code of Conduct or
- that the Member did fail to comply with the Code of Conduct, in which case it will also decide what action to recommend or to take.

The Member Conduct Panel will not announce its decision at the Hearing. Before reaching a final decision on the complaint and any sanction, the Chairman of the Member Conduct Panel will report its finding to the Independent Person, whose views will be sought and taken into account by the Panel before a final decision is made.

## 9. What action can the Member Conduct Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Member Conduct Panel the power to take such action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Member Conduct Panel may –

9.1. Decide that no action is needed

9.2. Censure the Member

9.3. Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she consider all any of the following sanction:

- The Member be removed from any or all Committees or Sub-Committees of the Council;
- the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority

9.4. Report its findings and recommendations to the next available meeting of the County Council.

The Member Conduct Panel has no power to suspend or disqualify the Member or to withdraw members' or special responsibility allowances.

## 10. How are the Panel's finding communicated to me?

As soon as reasonably practicable after the Panel has made its final decision, the Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Member Conduct Panel, and send a copy to the complainant and to the Member and will make that decision notice available for public inspection.

## 11. Who are the Member Conduct Panel?

The Member Conduct Panel is a cross party Panel of Members of the Council chaired by the Chairman of the County Council. Any hearing will be conducted by three of their number, one of whom shall be the Chairman or Vice Chairman of the Council, who will chair the meeting. In the event that neither the Chairman nor Vice Chairman are able to chair the meeting the hearing will be conducted by three members of the Panel and the election of one of their number to chair the hearing will be the first item of business at the meeting.

## 12. Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is the appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- is, or has been within the past 5 years, a member, co-opted member or officer of the Council; or
- is a relative, partner or close friend, of a member, co-opted member or officer of the Council;

### **13. Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Member Conduct Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

### **14. Appeals**

A Member is expected to comply with the decisions taken through the process and has no right of appeal against a finding of breach of the Code of Conduct. However a Member may require that a further Member Conduct meeting reviews any sanction imposed at a hearing.

### **15. Local Government Ombudsman**

Where a complainant concludes that the authority has failed to deal properly with a complaint they may make a complaint to the Local Government Ombudsman.