



Audit & Governance Committee
2 September 2013

ETHICAL STANDARDS ANNUAL REVIEW

Purpose of the report:

To report on the operation of the Council's Code of Conduct for its members, training on the Code of Conduct and the Council's arrangements for dealing with complaints that members have breached the Code of Conduct

Introduction:

1. The Localism Act 2011 ("the Act") led to the abolition of the national standards regime. In its place there is now a statutory duty placed on councils to promote and maintain high standards of conduct by their members and co-opted members
2. The Council is required by law to have a Code of Conduct governing elected and co-opted members' conduct, when acting in those capacities. A council's code of conduct must, viewed as a whole, be consistent with the following seven principles: –
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

The Code must also include provisions which the Council considers appropriate with regard to the registration and disclosure of pecuniary and other interests.

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

4. 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.
5. 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.
6. The Committee is also responsible for granting dispensation to members relating to interests set out in the Members’ Code of Conduct.
7. This report sets out how the Council has complied with the requirements of the Act and what training and guidance have been provided to members and co-opted members. It also reports on the operation of arrangements to deal with complaints about members and summarises the complaints received and action taken over the first year of this new local framework.

The Code of Conduct

8. The Council’s Members’ Code of Conduct is based on the Department of Communities and Local Government (“DCLG”) “illustrative” text for a code of conduct for members. It was adopted at the Council meeting of 17 July 2012 and is annexed to this report for ease of reference. The Council agreed that it wanted to adopt a simple high level code and agreed the recommendation of the Ethical Standards Working Group that it should not repeat the requirement of the old national code to treat other people with respect, although it noted that this had been the most frequent reason cited for a complaint under the previous regime.
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 one independent person who cannot be a councillor, officer or a relative or friend of any one of them. It also requires that the recruitment process is public and transparent
11. A person specification and role profile for the Independent Person was drafted and advertised on the County Council’s website in the late summer and autumn of 2012. A panel of 3 members, nominated by Group Leaders from within the membership of the Member Conduct Panel interviewed candidates, The panel recommended only one independent person be appointed, Professor Michael Joy OBE. Professor Joy was appointed by Council on 11 December 2012

Arrangements for receiving and handling complaints

12. 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. The Council agreed its arrangements at the meeting of 17 July 2012. A copy of those arrangements is annexed to this report. The Committee may wish to note that the arrangements are designed to promote informal resolution rather than an adversarial approach. There was a perception, both local and national, that the more adversarial process of the previous regime had resulted in long and expensive investigations of often trivial complaints.

Register of Pecuniary Interests

13. All members are required, by law 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. That Register must be published on-line.
14. Legal and Democratic Services prepared guidance for members about disclosable pecuniary interests and a copy of this was enclosed in all members' induction files following the election in May 2013. All members were asked to enter details of their disclosable pecuniary interests on-line and provided with guidance on the process. Staff followed this up with individual assistance to any member who had difficulties in accessing the system.
15. All new members notified the Monitoring Officer of their disclosable pecuniary interests within 28 days of taking up office. Returning members no longer have to completely re-register interests; however they were reminded that they should check their existing entries to ensure that these were up to date.
16. The Committee may wish to note that each elected member's entries on the Register of Interests are now easily accessible on their individual page on the Council's website. Co-opted members have also registered their interests, but these are not available on the Council's website.

Training and Guidance for Members

17. Legal and Democratic Services have provided training, guidance and assistance to members on all aspects of the new ethical standards regime.
18. Initial guidance offered to assist members in understanding the new regime included:
 - On 15 June 2012 the Monitoring Officer sent an email to all county councillors explaining the important changes in the way interests should be registered from 1 July 2012. She then wrote individually to each Member of the Council asking them to check that the interests they had previously recorded were up to date.

- Staff in Democratic Services converted the paper register entries into the new on-line format, updating entries where members had provided new information. These were then published in accordance with the new requirements.
 - In March 2013 the DCLG produced a guide for councillors entitled “Openness and Transparency on personal interests”. The Monitoring Officer wrote to all Members providing a link to this guidance
19. In May 2013 induction packs sent to every new and returning councillor included:
- The Code of Conduct
 - Guidance on declaring Interests and Gifts and Hospitality
 - The Member/Officer protocol
20. The Monitoring Officer and then Vice-Chairman of Council and Member Conduct Panel provided training sessions for members on 13 May 2013. This included an introduction to the Code of Conduct, information on the arrangements for dealing with complaints about members and a whole group exercise on declaring interests.
21. The Monitoring Officer and senior colleagues in Legal Services attended four sessions held to brief local committee members during May and June 2013 and give presentations on the Code and Interests, with particular emphasis on matters relating to Local Committee decisions. These sessions were attended by both County and Borough/District Council members of local committees.

<h3>Code of Conduct Complaints</h3>

22. The first year of the new regime (1 July 2012 to 1 July 2013) has seen six occasions giving rise to a complaint about the conduct of a Member or members. One Member has been the subject of multiple complaints about a single incident. One complaint included allegations against more than one Member and two members have each been the subject of two unrelated complaints. None of the complaints has proceeded to investigation. Three of the complaints were in the context of unpopular or controversial decisions, taken by a committee or by Cabinet.

Details of each allegation remains confidential but some information is set out below:

Complaint 1 (December 2012) alleged that several members had pre-determined their decision at a Local Committee. The Monitoring Officer did not accept that this complaint, if proven, would amount to a breach of the Code of Conduct. The complainant was informed of the decision and the matter was closed.

Complaint 2 (March 2013) alleged that a Member failed to observe high standards of conduct in a meeting with representatives from partner organisations. The complainant and Member both agreed to mediation. The complainant withdrew their complaint prior to the mediation meeting.

Complaint 3 (March 2013) related to misleading publicity. The Monitoring Officer consulted the Independent Person appointed by the Council, and conducted a preliminary investigation. This established that the Member had published a correction to the initial publicity and distributed it to people who may have been affected by the issue in question. The Monitoring Officer concluded that in view of this correction, the alleged behaviour would not amount to a breach of the Members' Code of Conduct and informed the complainant and the Member. The complaint was closed

Complaint 4 (March 2013) was about failure to show respect to an officer of the council, contrary to the Member/Officer Protocol. A letter of apology was sent by the Member, which was accepted by the complainant and the complaint was closed.

Complaint 5 (June 2013): this is in fact multiple complaints about the way that a Member had conducted himself at a public meeting in connection with a locally controversial matter. The Monitoring Officer concluded that the allegations were not allegations of a breach of the Members' Code of Conduct. Allegations were framed in the language of the previous national code and despite being provided with links to the Council's current Code the complainants did not clarify how the behaviour alleged breached these provisions.

Complaint 6 (June 2013) was about a member's delay in replying to emails and a refusal to explain controversial remarks he had made in a Committee meeting. The Monitoring Officer concluded that the behaviour complained of, even if proven did not amount to a breach of the Code of Conduct. The complainant and Member were informed.

23. In addition to the above, two complaints received at the end of 2011/12 were referred to the Member Conduct Panel, under transitional arrangements during the 2012/13 year. These complaints were partially upheld and, after consultation with the Independent Person, reports of each breach were made to the Council.

Risk Management Implications

24. The Council's Code of Conduct, Register of Interests and arrangements for dealing with complaints are both a statutory requirement and a key element of good governance. A failure of the ethical standards framework would diminish public confidence that Members are transparent about their personal interests and that decisions are taken solely in the public interest. The Council's arrangements for handling complaints have been designed to achieve an informal resolution where appropriate and to ensure that any formal process is proportionate to the behaviour giving rise to the complaint, whilst ensuring that any allegation that a Member has put themselves in a position where their personal interests appear to conflict with their public duty will be taken very seriously. The decision that "lack of respect" would no longer constitute a breach of the Code of Conduct has led to a small number of complaints not being accepted by the Monitoring Officer. Similar complaints received under the previous regime would have been assessed by a Sub Committee of members, including independent representatives, so the new arrangements

give rise to a slightly increased risk of a perception that members' behaviour is not subject to rigorous scrutiny. However the facility to offer a more rapid conciliatory process has led to some positive outcomes which should increase public confidence. This would not have been possible under the more rigid rules of the previous regime.

Conclusion

25. This has been the first year of the new locally determined Standards regime. The Council has met all its statutory obligations and the arrangements for handling complaints are working effectively. Training and guidance have been made available throughout the year.
26. All elected members' registers are available online and all members and co-opted members have been offered training and guidance about registering and declaring those interests.
27. The number of complaints has been comparable with previous years. There have been no complaints relating to a Member's personal interests or allegations that a Member has acted for personal gain. The most frequent reason for a complaint is that the complainant has felt offended by a member's conduct towards them. This again is a similar trend to that of previous years. Decisions taken by Council about the content of the Code of Conduct and the arrangements for dealing with complaints has however changed the approach adopted. Most have been informally resolved or rejected, rather than being subject to a formal assessment and possibly an investigation process.

Recommendations:

28. That the Committee notes the report and considers how frequently it would like to receive reports to enable it to monitor the operation of the Code of Conduct.
29. In view of the various training opportunities offered in 2013 the Monitoring Officer asks the Committee to endorse her view that no further formal training sessions would be required in the next twelve months and that she should ensure periodic reminders and guidance to Members are delivered via email.

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Sources/background papers:

The Localism Act 2011

County Council agenda and reports 17 July 2013

Guidance on declaring disclosable pecuniary interests

Openness and Transparency on personal interests

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'¹

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.²

¹ 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.

² 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.

Appendix 2

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

- 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 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.

The Council's Code of Conduct

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