

## WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 3 JULY 2012

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**Title:**

**THE NEW STANDARDS FRAMEWORK**

**[Portfolio Holder: Cllr Robert Knowles]**

**[Wards Affected: All]**

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**Summary and purpose:**

The Localism Act 2011 made fundamental changes to the ethical standards regime for Members. It abolished the detailed prescription set up under the Local Government Act 2000 and gives the Council much more discretion in setting a more appropriate and simplified standards regime. The operative date for the changes is 1 July 2012, although the final Regulations were only received from Government on 8 June 2012.

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**How this report relates to the Council's Corporate Priorities:**

Confidence in high standards of conduct is a key part of understanding and responding to our residents' needs.

**Equality and Diversity Implications:**

High standards of conduct by Members underpin the Council's approach to social inclusion and community cohesion.

**Environment and Climate Change Implications:**

There are no Environment and Climate Change implications.

**Resource/Value for Money Implications:**

The change can be accommodated within existing budgets, and there may be a small saving on Members' allowances of £1,200.

**Legal Implications:**

The Council is under a range of duties under the Localism Act and adopting a new Code and arrangements will be a key part of discharging these duties.

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**1. Introduction**

- 1.1 The Localism Act gives Councils an explicit duty to promote and maintain high standards of Member conduct and the current statutory model Code of Conduct is abolished. However, it is replaced with an obligation on the

Council to adopt a Code dealing with the high standard of conduct that is expected of Members when acting in their official capacity. The Code must include such provision as the Council considers appropriate for the registration and disclosure of pecuniary and other interests. It sets up a new category of disclosable pecuniary interests which involve very strong sanctions, and make failure to disclose a criminal offence.

- 1.2 The Government has not prescribed what local Codes must contain, other than stipulating that they must be consistent with the following principles of holding public office first set out by Lord Nolans Committee on Standards in Public Life in the 1990s: -
  - selflessness
  - integrity
  - objectivity
  - accountability
  - openness
  - honesty
  - leadership
- 1.3 A draft Code recommended to Members is attached as Annexe 1. The Code will apply to both elected councillors and co-opted members when they act in their official capacity (paragraph 1(1)). The seven principles of public life are given prominence in paragraph 1(3).
- 1.4 Officers considered it appropriate to include some general obligations of good conduct. Transposed from the template code provided by the Minister for Local Government, these include: -
  - treating other persons with respect;
  - not breaching confidences except in limited circumstances; and
  - only using the resources of the Council for proper purposes.
- 1.5 The Code cautions against the acceptance of excessive gifts or hospitality but there is no requirement to register individual items. However, officers feel that continuing to require registration of gifts or hospitality if estimated value exceeded £25 would help maintain public confidence in Waverley's high standards.
- 1.6 The Code has to make provision for the registration and disclosure of pecuniary interests. The annexe to the Code sets out the definition of these. The obligation will be on a newly-elected Member to notify the Monitoring Officer of all disclosable pecuniary interests within 28 days of taking office. A Member with a disclosable pecuniary interest in a matter to be considered at a Council, Cabinet or Committee meeting cannot participate in any discussion or vote at the meeting. The draft Waverley Code also requires existing Members to register their interests.
- 1.7 Officers also think it appropriate to make provision for a limited number of non-pecuniary interests to be registered. These will cover membership of or

occupation of a position of general control or management of the following bodies: -

- bodies to which the Member has been nominated by the Council;
- bodies exercising functions of a public nature;
- bodies directed to charitable purposes; and
- bodies whose principal purpose includes the influence of public opinion

1.8 Paragraph 7 of the draft Code takes account of the legislative position taken by the Government so far as allegations of bias or predetermination are concerned. Section 25 of the Localism Act 2011 provides that a Member is not to be taken as having had a closed mind when making a decision "just because" he/she had previously expressed a view in relation to the matter. This is given effect in paragraph 7(1) of the new Code. It also warns against accepting obligations to outside individuals. The intention is to cover conduct, interests and bias in one comprehensive Code that Members can follow.

## **2. Independent Person**

2.1 The Council has to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, or at any other stage. The Member against which an allegation has been made can also consult them. Officers are working jointly with Guildford, Spelthorne and Mole Valley Councils to select two independent persons jointly who can be recommended to the Council for appointment. Interviews are scheduled for 4th July 2012.

## **3. Arrangements for Handling Allegations**

3.1 The intention here is to provide for arrangements that are substantially simpler and clearer than the procedures that exist at present. The now defunct former processes reflected the requirements of the former statutory regime and Standards for England. Annexe 2 sets out much simpler processes for dealing with allegations that a Member has breached the Code and, when necessary, proceeding to investigation and decision.

3.2 The Monitoring Officer will, as now, be the first contact for all complaints. The arrangements will permit an initial review and consultation with the Independent Person. If the complaint is trivial or a breach of the Code is not specified, the process may end there with the complainant being given reasons. If a complaint alleges the commission of a criminal offence relating to a declarable pecuniary interest, the police will need to be informed. The early stage also provides for the possibility of informal resolution without formal investigation. However, if an investigation is necessary, that sets in train a particular process.

3.3 The investigative procedure is set out in paragraph 5 of the note. It will involve the investigator speaking with or writing to the parties and eventually writing a draft report. The parties will have the opportunity to comment on the draft before it is sent to the Monitoring Officer.

- 3.4 If the investigator concludes that there has been no evidence of a failure to comply with the Code, and the Monitoring Officer is satisfied that the report is sufficient, that will be the end of the matter, and the parties will be advised and a final copy of the report being provided. If there is evidence of a breach of the Code, the matter is likely to proceed to a hearing conducted by a panel of three Members from the Standards Panel appointed at Annual Council, although there is still the possibility of some other local resolution.
- 3.5 The procedure for a Panel hearing is set out in paragraph 7.2 of the note. A summary of possible actions, if a breach of the Code is established, is provided in paragraph 8.

#### **4. Appointment of Independent Person**

- 4.1 The role of the Independent Person has been advertised on the Waverley and other three partner Council's websites. It is proposed not to pay a set allowance, although, the Council will reimburse occasional expenses. Officers propose that appointment should be for an initial term of three years.

#### **5. Other Allowances**

- 5.1 Currently the Chairman and Vice Chairman of the Standards Committee receive a Special Responsibility Allowance and co-opted and appointed Members an allowance of £200. The total cost in a full year is approximately £1,800. Members may wish to allocate an allowance to the Chairman of the new Standards Panel, of the current level of £525 and amend the Allowances scheme accordingly.

#### **6. Surrey Collaboration**

- 6.1 Officers have been working through the Surrey Secretaries Group to aim to have broadly consistent Codes of Conduct across Surrey. It is not, for example, ideal for Surrey councillors participating in Surrey County Council Local Committees to owe different obligations to Surrey County Council as they might under their Borough Codes of Conduct. Councillors who serve at both or all three tiers could be subject to different obligations in different spheres. Each authority is responsible for the adoption of its own Code, and local circumstances will differ, so it has not been possible to achieve total uniformity across Surrey. However, officers have explored the potential for harmonising Codes, on the basis of if not identical provision then at least by a common approach. The draft Code recommended for adoption is not dissimilar from Surrey County Council's emerging Code. It is based on the Codes already adopted by Elmbridge and Woking Boroughs. The Act permits revision of the Code at any time. Officers suggest that the operation of the Code and arrangements should be reviewed in twelve months time.

## **7. Dispensations where Members are not able to discuss an item because of interests**

7.1 Currently requests for dispensations are dealt with by the Standards Committee. Officers propose that in future these be dealt by the Monitoring Officer in the following circumstances –

- (i) That so many Members of the decision-making body have disclosable pecuniary interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- (ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- (iii) That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- (iv) That, without a dispensation, no member of the Executive would be able to participate on this matter; or
- (v) That the Council considers that it is otherwise appropriate to grant a dispensation. This will inevitably be fact specific.

7.2 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

## **8. Waverley Constitution**

8.1 The current constitution reflects the previous standards regime. The very short timescale given by the Government from finalising regulations has meant that it has not been possible to discuss these fully with Councillors.

## **9. Training**

9.1 The Monitoring Officer and Deputy have arranged training sessions for all Members on 3 and 19 September 2012 on the new framework and all Members should attend.

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## **Recommendation**

The Executive is asked to RECOMMEND to the Council that

1. The draft Code of Conduct at Annexe 1 be adopted as Waverley’s Code of Conduct with immediate effect;
2. The draft arrangements at Annexe 2 be adopted as Waverley’s arrangements for investigating Standards Allegations with immediate effect, in accordance with Section 28(6) of the Localism Act 2011;

3. The arrangements for appointing the Independent Members be approved and names of the proposed appointees be submitted to the Council meeting;
4. It agrees the proposals in paragraph 5.1 for amending the Scheme of Members allowances;
5. It appoints the Monitoring Officer as Proper Officer to deal with initial discussion on investigations, decisions on whether they should be formally investigated and all decisions on local resolution and dispensations and amend the Constitution and Scheme of Delegation accordingly;
6. Hearing Panels consist of three Councillors to be drawn from the Panel of eight Members appointed at the Annual Council meeting on 8 May 2012;
7. The two existing Town and Parish Council representatives be co-opted non-voting Members onto the Standards Panel and be invited to attend Hearing Panels only when they involve matters of Town and Parish Council Member conduct as non-voting Members; and
8. The Monitoring Officer be instructed to draw up the Register of Interests to comply with the Localism Act for Waverley and for each Town and Parish Council.

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#### Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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