

Report to	Council	Item 8
	19 June 2012	
Report of	The head of law and governance	
Subject	Members' code of conduct and standards framework arrangements	

Purpose

The purpose of this report is to seek members' decision on implementation of the new standards regime under the Localism Act 2011 ("the Act" in this report).

Recommendation

To recommend council to adopt, as of 1 July 2012, the standards framework arrangements set out in the report, including:

- (1) The code of conduct, together with the guidance for members, set out as appendix 1;
- (2) The establishment of arrangements for dealing with standards allegations and the establishment of a standards committee all as set out in appendix 2;
- (3) The appointment of an independent person and reserve independent persons in accordance with paragraph 18-23 of the report;
- (4) The establishment of a register of interests to be kept and maintained by the monitoring officer and to contain those matters set out in appendix 3 until such time as the Secretary of State publishes regulations relating to 'disclosable pecuniary interests' when the council may be asked to consider new proposals and changes to standing orders in relation to the registration and declaration of interests;
- (5) The delegation of dispensation powers under section 33 of the Act to the standards committee and the designation of the monitoring officer as proper officer for the receipt of applications for dispensations;
- (6) The adoption of such other changes to the council's constitution as are necessitated by the changes outlined above;
- (7) The delegation to the monitoring officer of the power to take all steps and deal with all such ancillary matters as are required to implement any of the above and to render the council compliant with the Act.

Corporate and service priorities

The report helps to meet the corporate priority Value for money services and the service plan priority.

Financial implications

There are no direct financial implications arising from this report. However if the members' allowances panel is mindful to make a recommendation of an allowance to be payable to the independent member(s) then this will need to be considered by council.

Ward/s: All

Cabinet member: Councillor Waters, cabinet member for resources

Contact officers

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Background documents

None

Report

Background

1. The Act abolishes the standards regime established under the Local Government Act 2000 and replaces it with a simpler, less prescriptive method of addressing standards and ethics issues within Local Authorities.
2. A key feature of the Act's provisions in relation to standards and ethics is the inclusion of a statutory duty to promote and maintain high standards of conduct by members and co-opted members of the Authority. It also includes:
 - a) the abolition of the Standards Board for England ("Standards for England") (effective 1 April 2012).
 - b) the mandatory adoption of a code of conduct intended to promote and maintain behaviour consistent with the following principles.
 - i) Selflessness;
 - ii) Integrity
 - iii) Objectivity
 - iv) Accountability
 - v) Openness
 - vi) Honesty
 - vii) Leadership
 - viii) The option for Local Authorities to have a Standards Committee to assist in carrying out the statutory duty.
 - ix) A flexible non-prescriptive framework for dealing at local level with Standards complaints.

A New Code of Conduct

3. In keeping with the Localism principles of the Act each Local Authority is given the discretion to decide on the contents of its own code. It must, however, serve to promote and maintain high standards of conduct and must be consistent with the seven principles outlined above.
4. The council's current code (based on the national Model Code of Conduct) is intended to be repealed as from 1 July 2012. Until this repeal happens then the current code and standards framework arrangements will remain in place.
5. During the passage of the Act through Parliament, peers in the House of Lords suggested that the LGA should develop methods to support councils when developing codes. The constitution working party considered this outcome-

focused template code at its meeting on 16 April 2012 and considered that it was not appropriate to recommend it to council preferring to endorse, in principle, a rules based code of conduct for members, as recommended by the county and district councils' monitoring officers' group at its meeting on 28 March 2012 and ACSes (Association of Council Secretaries and Solicitors). The recommended code of conduct, as endorsed by the constitution working party, is attached as appendix 1 of this report.

6. The Act permits individual authorities to prescribe their own arrangements for registration and disclosure of interests.
7. The adoption of a code (and any subsequent revision or replacement) under the Act can only be done by full council. The council must publicise the adoption, revision or replacement of a code in such a way as the council considers likely to bring it to the attention of persons living in its area.

Members' Interests

8. The Act makes provision for the registration and disclosure of members' interests. This must be included within the code and pecuniary interests and "interests other than pecuniary interests" are distinguished. However, the Act specifies that the Secretary of State will make regulations to describe 'disclosable pecuniary interests' and as at the date of writing this report those regulations have not been published. Interim arrangements are therefore proposed in Appendix 3.
9. The Act places a duty upon the monitoring officer to establish and maintain a register of interests. The register must be available for public inspection and published on the council's website.
10. Details of sensitive interests (which may cause the member to be subject to violence or intimidation) may be withheld from the register and the website although the fact that there is an interest will be recorded.

Disclosable Pecuniary Interests (regulations awaited, as referred to in paragraph 8)

11. A member who has a disclosable pecuniary interest in any matter to be considered at a meeting must disclose that interest unless it is already on the register.
12. A member with a disclosable pecuniary interest may not participate or vote on the matter.
13. The council may make standing orders to provide for the exclusion of a member with a disclosable pecuniary interest in a matter under discussion. It is recommended to members to do this and to resolve that the exclusion extend to any part of the room in which the meeting is taking place including any area reserved for the public.

14. Members should note that in addition to the duties relating to interests contained in the code the Act also creates specific criminal offences in relation to the disclosure of pecuniary interests. It is a criminal offence to:-
- a) fail to notify the Monitoring Officer of any disclosable pecuniary interests within 28 days of being elected.
 - b) fail to disclose a pecuniary interest at a meeting of the council.
 - c) fail to notify the Monitoring Officer of an interest disclosable at a meeting but not yet on the register.
 - d) fail to notify the Monitoring Officer of an interest in the course of that member discharging a function of the council.
15. Any such failure is a direct contravention of the Act and may be investigated by the police and referred to the Director of Public Prosecutions. Upon conviction a person convicted may be fined up to a maximum of £5,000.

Arrangements

16. The council must put in place arrangements:
- a) under which allegations can be investigated; and
 - b) under which decisions on allegations can be made.
17. Draft arrangements are appended as appendix 2 to this report. The arrangements must include the appointment of at least one independent person as follows.

The Independent Person

18. The role of the independent person in the new standards arrangements is twofold. Firstly, the views of the independent person must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate.
19. Secondly, the views of the independent person may be sought by the authority generally or by the member who is the subject of the allegation. The role therefore differs from the previous role of independent members sitting on a standards committee.
20. The qualifications for an independent person are that the person must not be:-
- a) a member, co-opted member or officer of the council;
 - b) a relative or close friend of another member, co-opted member or officer;
 - c) a member, co-opted member or officer of the council, within five years of their prospective appointment.

21. Any appointment must be preceded by a public advertisement, an application and approval by the majority of the council's members.
22. Because of the above criteria the current independent members of the council's standards committee are not eligible to be this council's "independent person".
23. It is proposed to members that an independent person be appointed in collaboration with other local authorities in Norfolk so that in effect we establish a "pool" of available independent persons. The independent persons in that pool are appointed as independent persons for one authority and reserve independent persons for the other authorities thus making them available in a wider set of circumstances.

Standards Committee

24. There is no obligation under the Act on Local Authorities to appoint standards committees. Should members wish to appoint a standards committee then Appendix 2 to this report proposes terms of reference for a standards committee. Members should note that the standards committee is a non-executive function and the political balance rules of the Local Government and Housing Act 1989 will apply.
25. The recommendations also set out a proposed list of sanction powers available to the standards committee upon a finding of a breach of the code. Members will note that the sanction powers no longer include the powers of suspension and disqualification available under the previous regime. The Act in fact prescribes no powers of sanction and the suggested sanctions are based upon use of existing express or implied powers.
26. It will be possible to appoint the council's independent standards committee members to the new standards committee but they will not be voting members.

Dispensations

27. The Act provides for dispensations from the speaking and voting restrictions of members with disclosable pecuniary interests.
28. The dispensation application may be made to the monitoring officer for this purpose and determined by the standards committee.
29. Dispensations may be granted where after having had regard to all relevant circumstances, the authority:
 - a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

- c) considers that granting the dispensation is in the interests of persons living in the authority's area,
 - d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or
 - e) considers that it is otherwise appropriate to grant a dispensation.
30. A dispensation, if granted, must be for a specific period not exceeding four years.

Integrated impact assessment



NORWICH
City Council

Report author to complete

Committee:	Cabinet, standards committee and council
Committee date:	13 June, 15 June and 19 June 2012
Head of service:	Head of law and governance
Report subject:	Members' code of conduct and standards arrangements
Date assessed:	
Description:	

	Impact			
Economic (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Finance (value for money)	☒	☐	☐	
Other departments and services e.g. office facilities, customer contact	☒	☐	☐	
ICT services	☒	☐	☐	
Economic development	☒	☐	☐	
Financial inclusion	☒	☐	☐	
Social (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Safeguarding children and adults	☒	☐	☐	
<u>S17 crime and disorder act 1998</u>	☒	☐	☐	
Human Rights Act 1998	☒	☐	☐	
Health and well being	☒	☐	☐	
Equality and diversity (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Relations between groups (cohesion)	☒	☐	☐	

	Impact			
Eliminating discrimination & harassment	☒	☐	☐	
Advancing equality of opportunity	☒	☐	☐	
Environmental (please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Transportation	☒	☐	☐	
Natural and built environment	☒	☐	☐	
Waste minimisation & resource use	☒	☐	☐	
Pollution	☒	☐	☐	
Sustainable procurement	☒	☐	☐	
Energy and climate change	☒	☐	☐	
(Please add an 'x' as appropriate)	Neutral	Positive	Negative	Comments
Risk management	☒	☐	☐	

Recommendations from impact assessment	
Positive	
Negative	
This report recommends the adoption of a new code of conduct and standards framework arrangements as required under the Localism Act 2011. This will replace the members' code of conduct (appendix 13 of the council's constitution) the impact of the proposals will be neutral.	
Neutral	
Issues	

Members' code of conduct and standards arrangements: Appendix 1



NORWICH
City Council

MEMBERS' CODE OF CONDUCT

INTRODUCTION

1. This code of conduct is made under section 27(2) of the Localism Act 2011 ("the Act") and applies to all members of Norwich City Council ("the council").
2. The purpose of this code is to promote and maintain high standards of conduct by members and co-opted members of the council when they are acting in that capacity.
3. This code is intended to promote and maintain behaviour consistent with the following principles:

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

4. You must register and declare interests as required by the Act.

GENERAL PROVISIONS

Introduction and interpretation

5. This code applies to you as a member¹ of an authority.
6. You should read this code together with the general principles contained in the Act.
7. It is your responsibility to comply with the provisions of this code.
8. In this code - "meeting" means any meeting of:
 - (a) the authority;
 - (b) the executive of the authority, ie the cabinet;
 - (c) any of the authority's or its cabinet's committees, sub-committees, joint committees² and joint sub-committees.

Scope

9. Subject to paragraphs 10 to 13, you must comply with this code whenever you:
 - (a) conduct the business of the council (which, in this code, includes the business of the office to which you are elected or appointed); or,
 - (b) act, claim to act or give the impression you are acting as a representative of the council;

¹ **"member"** includes a co-opted member and an appointed member. **"co-opted member"** means a person who is not a member of the authority but who: (a) is a member of any committee or sub-committee of the authority, or (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

² Reference to a joint committee or joint sub-committee is a reference to a joint committee on which the authority is represented or a sub-committee of such a committee.

and references to your official capacity are construed accordingly.

10. Subject to paragraphs 11 and 12, this code does not have effect in relation to your conduct other than where it is in your official capacity.

11. In addition to having effect in relation to conduct in your official capacity, paragraphs 14(b), 16, and 17(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

12. Conduct to which this code applies (whether that is conduct in your official capacity or conduct mentioned in paragraph 10) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

13. Where you act as a representative of the council:

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with the council's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

14. You must treat others with respect.

15. You must not:

- (a) do anything which may cause the council to be in breach of any statutory obligations;
- (b) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the council.

16. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party

agrees not to disclose the information to any other person;
or;

(iv) the disclosure is:

(aa) reasonable and in the public interest; and,

(bb) made in good faith and in compliance with the
reasonable requirements of the authority; or,

(b) prevent another person from gaining access to information to
which that person is entitled by law.

17. You must not conduct yourself in a manner which could reasonably be
regarded as bringing your office or authority into disrepute.

18. You:

(a) must not use or attempt to use your position as a member
improperly to confer on or secure for yourself or any other person,
an advantage or disadvantage; and,

(b) must, when using or authorising the use by others of the
resources of the council:
(i) act in accordance with the council's reasonable requirements;
(ii) ensure that such resources are not used improperly for political
purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of
Publicity made under the Local Government Act 1986.

19. When reaching decisions on any matter you must have regard to any
relevant advice provided to you by:

(a) the council's chief finance officer; or

(b) the council's monitoring officer, where that officer is acting
pursuant to his or her statutory duties.

20. You must give reasons for all decisions in accordance with any statutory
requirements and any reasonable additional requirements imposed by the
council.

Members' code of conduct and standards arrangements: Appendix 2



NORWICH
City Council

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS

1. The following arrangements constitute Norwich City Council's adopted procedure for dealing with complaints that a councillor has failed to comply with the council's code of conduct.
2. The council will appoint a standards committee of 8 members (including two co-opted members). Its terms of reference are :-
 - (a) The promotion and maintenance of high standards of conduct by the members and co-opted members of the council.
 - (b) To deal with any ancillary matters relating to standards and conduct including replying to consultations, training etc.
 - (c) To assist when called upon to do so in deciding whether a standards complaint should be referred for investigation.
 - (d) To hear and determine standards complaints made against the council's members and co-opted members.
 - (e) To impose such sanctions as they think fit in relation to matters found to be breaches of the code.
 - (f) To hear and determine applications for dispensations.
3. A complaint must be made in the first instance to the council's monitoring officer.
4. A complaint must be made on the council's model complaint form or, if submitted in any other way, must contain all the information required by that form.

5. The monitoring officer will consider the complaint against the council's adopted criteria for deciding whether a complaint should be referred for formal investigation. The monitoring officer will consult the council's "independent person" before making a decision.
6. If the monitoring officer decides not to refer the complaint for investigation then the matter is closed. There is no provision for appeal or review of that decision by the council or any other person. The monitoring officer will give a summary of the reasons for his / her decision.
7. If the Monitoring Officer decides that the complaint requires investigation the Monitoring Officer will appoint a person to investigate and to report back to him/ her. The Monitoring Officer will then consider the conclusion of the investigator's report.
8. If the conclusion of the investigation is that there has been no breach of the Code and the Monitoring Officer considers that that is a reasonable conclusion then the Monitoring Officer will write to the complainant and the member concerned to inform them that there will be no further action. Again, there is no provision for appeal or review of that decision by the council or any other person.
9. If the investigation concludes that there is evidence of a breach of the Code then the Monitoring Officer will consult the Independent Person and make a decision either to:-
 - (a) resolve the matter without the need for a hearing or
 - (b) to convene a meeting of the council's standards committee or a sub committee of the standards committee to hear the matter.
10. The procedure at the hearing will be in accordance with rules adopted by the standards committee.
11. If the hearing concludes that there has been **no breach** of the code then the matter is resolved. There is no provision for appeal or review of that decision by the council or any other person.
12. If the hearing concludes that there **has** been a breach of the code the committee will consider whether and what sanction it might be appropriate to impose on the member found to be in default. These are as follows:-
 - (a) Censure or reprimand.
 - (b) Report to full council.
 - (c) Recommendation to the council to remove the member from membership of committees or sub-committees.
 - (d) Recommendation to the council to remove the member from any position (including leader) of the cabinet.

- (e) Require the member to undergo training in ethics and standards.
- (f) Removal of the member from external nominations or appointments.
- (g) Withdrawal of facilities or services from the member including access to council premises and/or IT facilities.

Members code of conduct and standards arrangements: Appendix 3

REGISTRATION OF MEMBERS' INTERESTS

The requirements of the Localism Act in relation to the registration and declaration of interests are summarised in paragraphs 8 to 15 of this report.

Until such time as the Secretary of State published the regulations referred to in Clause 30 of the Localism Act 2011 the council shall adopt the registration and declaration provisions currently found in appendix 13 of the constitution.