

17 October 2017

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| Report of | Monitoring Officer | Author | Andrew Weavers ☎ 282213 |
| Title | Annual review of the Members' Code of Conduct and the Council's Localism Act Arrangements | | |
| Wards affected | Not applicable | | |

Executive Summary

This report requests the Committee to review the Councillors' (Members) Code of Conduct, the Council's Localism Act Arrangements for dealing with councillor complaints and to make recommendations to Full Council regarding any amendments.

The report also provides an update on the number and types of complaints received under the Members' Code of Conduct.

1. Decisions Required

- 1.1 To note the contents of this report.
- 1.2 To keep the Members' Code of Conduct and the Council's "Arrangements" under annual review.
- 1.3 To agree to make recommendations to Full Council regarding any amendments to the Members' Code of Conduct and the Council's "Arrangements" in the light of experience.

2. Background

- 2.1 The Localism Act 2011 ("the Act") made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. These new arrangements came into effect on 1st July 2012. The Act required that local authorities adopted a code of conduct consistent with the seven Nolan Principles of public life and that Principal Authorities put in place "Arrangements" to deal with allegations that Councillors had failed to comply with the Members' Code of Conduct. Principal Authorities were also required to appoint at least one "Independent Person" who would be consulted as part of the Council's "Arrangements".
- 2.2 The Full Council at its meeting on 25 June 2012 formally adopted the Borough Council's Members' Code of Conduct and its "Arrangements" which are attached to this report at Appendix 1 and Appendix 2 respectively. As part of its "Arrangements", the Full Council at its meeting on 24 May 2017 re-appointed Barbara Pears and Sarah Greatorex as the Council's Independent Persons for a further term of four years.
- 2.3 The Act also introduced a new interest's regime which included a new register of Members' interests. The Government published amended guidance in September 2013 for councillors on interests ("Openness and transparency on personal interests – a guide for councillors") which has been circulated to all Borough Councillors and to every Town and Parish Council within the Borough.

- 2.4 The Act places on the Borough Council a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. The full council has in turn delegated this function to this Committee as part of its terms of reference.
- 2.5 The Committee at its meeting on 11 October 2016 last reviewed the Council's Localism Act processes and this report seeks to review our subsequent experience to date.

3.0 Review of the Code

- 3.1 The Act did not prescribe the contents of the Code (save to be consistent with the seven Nolan principles) and accordingly the version of the Members' Code of Conduct adopted by the Full Council was a version promoted by the Public Law Partnership. This was to ensure a consistent approach across the County and to ensure that all council's (County, districts and parishes) adopted the same version of the Code so as to provide a sense of clarity for Councillors.
- 3.2 All the Town and Parish Council's in the Borough adopted the Borough Council's Code. The Borough Council's Code has been operating successfully in the part year without any apparent difficulties or concerns and I would propose that the Committee continues to keep the Code under annual review and makes recommendations to Full Council on any subsequent amendments in the light of experience.
- 3.3 The Act requires the Monitoring Officer to compile and publish on the Borough Council's website the Register of Members Interests. This includes Disclosable Pecuniary Interests for both Councillors and their partners and also pecuniary and non-pecuniary interests just for Councillors. All of the Borough Councillors interests are published and most of those of the Town and Parish Councillors in the Borough have also been published on the Borough Council's website. However, the Act did not make it a statutory requirement for all existing Councillors to register their declarable interests. The Act does however make it an offence for a councillor to fail to register their declarable interests within a period of 28 days of becoming elected. However the Government stated in its guidance:-

"All sitting councillors need to register their declarable interest. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty (i.e. Nolan Principles), with which you must comply"

This has been specifically been drawn to the attention of all Town and Parish Councils.

- 3.4 The Borough Council's Committee Management Information System enables the Register of Members' Interests to be published in line with the Government's transparency agenda so that all Councillors' information is in one place on the website.
- 3.5 Training on the Code on Conduct is offered regularly by the Monitoring Officer for Borough Councillors and also provided refresher training for group of Parish Councils earlier in the year.

4.0 Review of the Arrangements and the Code of Conduct

- 4.1 The Act required the Council to adopt "Arrangements" for dealing with allegations that Councillors have potentially failed to comply with the Code. Any allegations that Councillors have not complied with the Disclosable Pecuniary Interests regime under the Act are not dealt with under the Council's "Arrangements" as they are potentially criminal

offences and need to be dealt with by the Police. As at the date of this report there have been no such allegations or referrals.

- 4.2 The Council's "Arrangements" are made publically available on the Borough Council's website and have been used on several occasions. All allegations are received by the Monitoring Officer who makes an assessment of the merits of the complaint in consultation with an Independent Person in accordance with the "Arrangements".
- 4.3 The table at Appendix 1 below details the number, type and outcome of allegations received since 1 July 2012. The table indicates an increase in the numbers in the past year. This is attributable to complaints emanating about comments made on social media. The Localism Act states that the Code of Conduct only applies when a Councillor is acting in their capacity as a councillor. This has been upheld in subsequent case law which has held that the Code of Conduct only applies when a councillor is acting in their official capacity. Accordingly the Code can only be used to regulate councillors' conduct when they are acting in that capacity.
- 4.4 Complaints have been received during the past year regarding comments made on twitter by councillors in their private capacity. This means that they are outside of the remit of the Code and cannot be investigated under the Arrangements but can be referred to this Committee for it to determine what action should be taken under the Council's powers of self- regulation. The Committee may wish to consider whether it would be beneficial to provide councillors with guidance on the use of social media which may assist in alleviating these types of complaints in the future. The Member Development Group has also recently highlighted social media as an area where training should be provided for councillors and officers are actively considering the most appropriate method of delivery.
- 4.5 Overall the Council's Localism Act "Arrangements" appear to be operating satisfactorily and I would propose that the Committee continues to keep them under annual review and to make any appropriate recommendations to Full Council on any subsequent amendments to the "Arrangements" in the light of experience. The Council's Code of Conduct is compliant with the law, however the Committee may wish to review its wording.

5. Strategic Plan References

- 5.1 The manner in which the Council governs its business is an underpinning mechanism in the Council's Strategic Plan aims to set out the direction and future potential for our Borough.

6. Publicity Considerations

- 6.1 The Council's Code of Conduct and "Arrangements" are available on the Council's website at www.colchester.gov.uk/standards

7. Financial, Equality, Diversity and Human Rights, Consultation, Community Safety, Health and Safety and Risk Management Implications

- 7.1 None.

Councillor Code of Conduct Allegations received since 1 July 2012

| Allegations | Jul12 – Mar13 | Apr 13 – Mar 14 | Apr 14 – Oct 14 | Nov 14- Oct 15 | Nov 15 – Oct 16 | Nov 16 – Oct 17 | Total |
|--------------------------------|---------------|-----------------|-----------------|----------------|-----------------|-----------------|-------|
| Number of allegations received | 2 | 3 | 2 | 3 | 3** | 13*** | 26 |
| Borough Councillors | 1 | 3* | 2 | 1 | 2 | 12 | 19 |
| Parish Councillors | 1 | 1 | 0 | 2 | 0 | 1 | 6 |

* one complaint was made against two councillors

** two complaints were made against one councillor

*** two persons made the same complaint against one councillor – another person made the same complaint against three councillors

The majority of allegations came under the heading of “treating others with respect” with one being under the heading of “not to do anything which may cause the Authority to breach any of the equality enactments”.

| Source of complaints | Jul12 – Mar13 | Apr 13 – Mar 14 | Apr 14 – Oct 14 | Nov 14- Oct 15 | Nov 15 – Oct 16 | Nov 16 – Oct 17 | Total |
|----------------------|---------------|-----------------|-----------------|----------------|-----------------|-----------------|-------|
| Member of the public | 2 | 6# | 2 | 2 | 1 | 9 | 13 |
| Borough Councillors | 0 | 0 | 0 | 1 | 1 | 1 | 2 |
| Parish Councillors | 0 | 0 | 0 | 0 | 0 | 2 | 0 |
| County Councillors | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Member of Parliament | 0 | 1 | 0 | 0 | 0 | 0 | 1 |

five separate persons made same complaint against one councillor

| | Jul12 – Mar13 | Apr 13 – Mar 14 | Apr 14 – Oct 14 | Nov 14- Oct15 | Nov 15 – Oct 16 | Nov 16 – Oct 17 | Total |
|---|---------------|-----------------|-----------------|---------------|-----------------|-----------------|-------|
| Complaints referred to Governance and Audit Committee | 0 | 0 | 0 | 1 | 1 | 1 | 3 |

| Outcome | Jul12 – Mar13 | Apr 13 – Mar 14 | Apr 14 – Oct 14 | Nov 14- Oct 15 | Nov 15 – Oct 16 | Nov 16 – Oct 17 | Total |
|-------------------------------------|---------------|-----------------|-----------------|----------------|-----------------|-----------------|-------|
| Not within remit of Code of Conduct | 0 | 0 | 0 | 1 | 0 | 5 | 6 |
| Merits no further investigation | 2 | 3 | 2 | 2 | 3 | 8 | 20 |
| Merits further investigation | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

NB. The two complaints referred to the Governance and Audit Committee merited no further investigation.