

# Standards Committee

Grand Jury Room, Town Hall  
23 March 2012 at 2.00pm

The Standards Committee deals with the local code of conduct for councillors and complaints against individual councillors.

# Information for Members of the Public

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**COLCHESTER BOROUGH COUNCIL  
STANDARDS COMMITTEE  
23 March 2012 at 2:00pm**

**Members**

**Independent Members**            Mr Derek Coe (Chairman)  
   Mr Peter Fitton (Deputy Chairman)  
   Mr Ian Andrews  
   Mr Steven Roberts-Mee

**Parish Representatives**            Councillor Bill Anderson  
   Councillor Malcolm Bartier

**Councillors**                        Councillor Christopher Arnold  
   Councillor Nigel Chapman  
   Councillor Ray Gamble  
   Councillor Henry Spyvee

**AGENDA - Part A**

(open to the public including the media)

**Members of the Public may wish to note that Agenda items 1 to 4 are normally brief**

**Pages**

**1. Welcome and Announcements**

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

## **2. Urgent Items**

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

## **3. Declarations of Interest**

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

## **4. Minutes**

**1 - 5**

To confirm as a correct record the minutes of the meeting held on 25 November 2011.

## **5. Standards After The Localism Act 2011**

**6 - 53**

See report by the Monitoring Officer

**6. Standards Committee Annual Report 2011/12**

**54 - 61**

See report by the Monitoring Officer

**7. Exclusion of the Public**

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).



# STANDARDS COMMITTEE

## 25 NOVEMBER 2011

*Present :-* Mr P. Fitton (Independent Member) Deputy Chairman  
Chairman  
Councillor Anderson  
Councillor Arnold  
Councillor Bartier  
Councillor Chapman  
Mr Farmer (Independent Member)  
Councillor Gamble  
Mr Roberts-Mee (Independent Member)  
Councillor Spyvee

### 8. Minutes

The minutes of the meeting held on 24 June 2011 were confirmed as a correct record.

### 9. Chip Abnett

The Chairman expressed his sadness at the recent death of Parish Councillor Terence "Chip" Abnett. The Chairman paid tribute to Chip who had made a valuable contribution to the work of the Committee and its Sub-Committees. His presence and contributions would be missed.

### 10. Localism

The Monitoring Officer provided the Committee with a verbal update on the Localism Act and its implications for the Standards Committee regime and circulated a briefing note explaining how the Localism Act impacted on standards issues.

The Monitoring Officer indicated that the Localism Act received Royal Assent on 15 November 2011. The key headlines of the Act as it related to Standards Committee and the Ethical Standards Framework were as follows:-

- The "Standards Board regime" and all the current legislation will be repealed. This includes the model code of conduct, statutory Standards Committees and Standards for England. It was expected that this would take place in April 2012.
- There will be a new general duty to promote and maintain high standards of conduct by members and voting co-opted members.
- Each "relevant authority" (districts and parishes) must adopt a code which deals with the conduct expected of members and voting co-opted members when acting in that capacity. (It had previously been indicated that adoption of a Code would be optional). The Code must be consistent with a new set of general principles and the rest of the new legislation, but there will be no national model. It will need to include

provisions about members' interests but most of the content is for the authority to decide.

- Regulations will define “disclosable pecuniary interests” of members and spouses/partners. The Monitoring Officer must maintain and publish a register of these as before, but the details of the duty to notify are different. Members will have to make an oral disclosure at meetings if their interest has not been registered. As before, sensitive information can be kept private if there is a risk of violence or intimidation.
- A member with an interest of this kind in a matter must not participate in any discussion of, or vote on, the matter at the meeting. Standing orders may require the member to leave the meeting. There is a similar rule for individual member decisions.
- It is a criminal offence to fail to notify the Monitoring Officer of an interest of this kind, or to participate in a meeting or take a decision, without reasonable excuse. It is also an offence knowingly or recklessly to provide false or misleading information. Only the Director of Public Prosecution can authorise prosecutions, and there are time limits.
- The authority can, however, grant dispensations permitting participation. The grounds for so doing are much wider than before.
- Authorities must “have in place arrangements” under which allegations of breach of the code can be investigated and decisions on allegations can be taken, with or without an investigation or a hearing. This could, but need not, include some kind of Standards Committee. However, any such Committee would be established under the normal rules and would need to be politically balanced. However, it would have no sanctions apart from “naming and shaming” and possibly withdrawal of facilities in some cases.
- Authorities must appoint an “independent person” (IP). The appointment of the IP would need to be approved by Council. They must consult the IP after an investigation, and may consult the IP on other complaints. A member about whom an allegation has been made can also consult the IP. The IP cannot be, or have been in the last five years, a member, co-opted member or officer of the authority. In discussion it was clarified that the IP was a single individual and the legislation did not allow for more than one appointment.
- These provision applied to parish councils, with modifications, except that their principal authorities will make and operate the “arrangements” for them and they will use the principal authority’s IP.
- The main gaps are the absence of any national coordination or consistency, and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality, underlined by the omission of “respect” and “stewardship” from the new list of principles. An authority’s code may cover these issues, but this is optional.
- The Government hopes the legislation will take effect in April 2012 but the Regulations about disclosable pecuniary interests have not yet been published. There



will be transitional arrangements for existing casework.

In respect of issues on predetermination and bias, the Monitoring Officer indicated that these were outside the Code of Conduct so were not directly affected by these changes. However, new rules on pre-determination and bias would come into force on 15 January 2012. Advice on these issues would be circulated to members in advance of this date. However, the position would be that expressing a view on an issue in advance of taking a decision on that issue would no longer be a sustainable basis of a challenge to that decision on the basis of predetermination or bias.

The Monitoring Officer reported that an all party group may be established within the Council to consider how to take forward the work on a potential Code of Conduct and the establishment of a process for dealing with complaints against elected members. Monitoring Officers across Essex were meeting to discuss how to take these issues forward and it was hoped that this would lead to a standard Code of Conduct that could be applied across Essex.

The Committee noted the Monitoring Officer's comments and expressed concern that the considerable experience of the Committee members in dealing with ethical and standards issues would be lost.

*RESOLVED* that the implications of the Localism Act 2011 for the Standards Committee and the ethical standards framework be noted.

## **11. Review of Ethical and Corporate Governance Arrangements**

The Committee considered a report from the Monitoring Officer setting out the details of a review of the Council's Ethical and Governance arrangements.

The Monitoring Officer explained that the review of ethical and corporate governance arrangements had been triggered by an internal audit report that had indicated that not all staff were fully aware of the Council's anti-fraud and corruption measures, together with the need to review the arrangements in the light of the introduction of the Bribery Act 2010. Particular attention was drawn to the Ethical Governance Statement. This set out for the first time the Council's position on ethical governance and stressed the Council's zero tolerance approach. The document would be positioned and promoted so it would be visible to staff and it would be published on the Council's website. The ethical and corporate processes had been redesigned so that all allegations would be channelled through the Monitoring Officer or the Section 151 Officer who would assess whether the concern was valid and if so, what process it should be determined under.

The Monitoring Officer emphasised that these new arrangements had top level commitment from the political and managerial leadership of the Council. Awareness sessions for members and for officers would follow. The sessions for officers would commence once the new arrangements were approved so that the Council's commitment to these arrangements could be emphasised.

In response to an enquiry from the Committee, the Monitoring Officer explained that it

was not yet clear as to whether the external person on the Ethical Governance Review Group would be the Independent Person appointed under the provisions of the Localism Act. However, the external challenge this role would provide was an integral element of the new arrangements.

*RESOLVED* that the revised Ethical and Governance Arrangements detailed at paragraph 7 of the Monitoring Officer's report be approved.

*RECOMMENDED to CABINET* that it endorse the revised Ethical and Corporate Governance arrangements and they be referred to Full Council for adoption in the Policy Framework.

## **12. Local Government Ombudsman - Annual Review 2010/2011**

The Committee considered a report from the Monitoring Officer about the Local Government Ombudsman Annual Review for 2010/2011.

The Monitoring Officer highlighted that there were no findings of maladministration against the Council and no formal reports issued.

*RESOLVED* that the contents of the Local Government Ombudsman's Annual Review for 2010/11 be noted.

## **13. Annual Review of Local Assessment of Complaints Against Members 2010/2011**

The Committee considered a report from the Monitoring Officer reviewing the local assessment process for the period 2010/2011.

The Committee were pleased to note that the local assessment process continued to work well. Whilst the statutory time targets had been scrapped, the report measured progress against these and the Committee noted that performance against these was good. The Committee expressed its thanks to Andrew Weavers, Hayley McGrath and Richard Clifford for the support it received. In the light of this positive report, the Committee again expressed its disappointment about the loss of expertise and experience that would result from the implementation of the provisions of the Localism Act.

*RESOLVED* that the contents of the Monitoring Officer's report be noted.

## **14. Review of Training for Members on the Code of Conduct and Local Assessment Process**

The Committee considered a report from the Monitoring Officer providing an update of training for members on the Code of Conduct and the local assessment process.

The Committee noted that there would be a need for training for both district and parish councillors on the new Code of Conduct and ethical governance regime that would be established by the Localism Act. Of particular importance would be training on the registering and declaring of pecuniary interests. However, it was accepted that this training would need to await the detailed provisions that would be included in Regulations made under the Act.

*RESOLVED* that training be provided in due course for both district and parish councillors on the new Code of Conduct and ethical governance regime established by the Localism Act.



## Standards Committee

Item  
**5**

23 March 2012

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Standards after the Localism Act 2011		
Wards affected	Not applicable		

**This report is to inform members of the provisions of the Localism Act 2011 as it relates to the Standards regime**

### 1. Decision(s) Required

- 1.1 For convenience, the recommendations are set out at the end of each section of this report.

### 2. The Localism Act 2011

- 2.1 The Localism Act 2011 (“the Act”) makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. The date for implementation of these changes was proposed to be the 1<sup>st</sup> April 2012 however other than the abolition of the Standards Board for England on the 1<sup>st</sup> April 2012, it is envisaged that the remaining local elements of the current regime, including statutory Standards Committees with the power to suspend Members will be abolished on the 1<sup>st</sup> July 2012 and that the new arrangements will come into effect on that date.
- 2.2 This report describes the changes and recommends the actions required for the Council to implement the new regime.
- 2.3 The Governance Special Interest Group of the Public Law Partnership which comprises Monitoring Officers from across the Essex has been working collaboratively to produce a common suite of documents for all authorities in Essex. The proposals contained in this report are consistent with this approach.

### 3. Duty to promote and maintain high standards of conduct

- 3.1 The Borough Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

### 4. Standards Committee

- 4.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will as from the 1<sup>st</sup> July 2012 be no requirement for a Standards Committee. However there will still be a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Committee. It will be a normal Committee of Council, without the unique features conferred by the previous legislation. As a result:-

- 4.1.1 The composition of the Committee will be governed by proportionality. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;
- 4.1.2 The current co-opted Independent Members will cease to hold office. The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted Independent Members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.
- 4.1.3 District Councils will continue to have responsibility for dealing with standards complaints against elected and co-opted members of Parish Councils within their area, but the current Parish Council representatives cease to hold office.
- 4.1.4 District Councils can choose whether they want to continue to involve Parish Council representatives and if so how many Parish Council representatives it wants.
- 4.1.5 The choice is between establishing a Standards Committee as a Committee of the Borough Council with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the Borough (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee). It is suggested that this be considered at a later date.
- 4.1.6 Draft terms of reference for a Standards Committee (including a Hearings Sub-Committee) are attached to this report at Appendix A.

**Recommendation 1**

- (a) That the Council establishes a Standards Committee comprising 7 elected members of the Borough Council, appointed proportionally and with the draft terms of reference as attached to this report;
- (b) That the Leader of the Council be requested to nominate to the Committee only one member who is a member of the Cabinet;
- (c) That the Parish and Town Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members of the Committee

**5. The Code of Conduct**

- 5.1 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct.
- 5.2 The Council will however be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles ("the Nolan Principles"):

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

- 5.3 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven Nolan Principles. However, regulations yet to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests”, broadly equating to the current prejudicial interests.
- 5.4 It is not yet possible to draft Code provisions which reflect the definition of Disclosable Pecuniary Interests which will appear in the regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the Code in respect of the totality of all interests, including Disclosable Pecuniary Interests and other pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for Disclosable Pecuniary Interests.
- 5.5 The Act prohibits members with a Disclosable Pecuniary Interest from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.
- 5.6 In light of the above the Council’s new Code of Conduct will have to deal with the following matters:
- General conduct rules, to give effect to the seven Nolan Principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
  - Registration and disclosure of interests other than Disclosable Pecuniary Interests effectively, replacing the current personal interest provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining Disclosable Pecuniary Interests, it is difficult to suggest what additional disclosure would be appropriate.
- 5.7 A draft Code of Conduct has been prepared by the Public Law Partnership which is attached to this report at Appendix B.

## **Recommendation 2**

- (a) That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should:
- i. Equate to Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees; and
  - ii. Require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.
- (b) That, when the Disclosable Pecuniary Interest Regulations are published, the Monitoring Officer, after consultation with the Chair of the Standards Committee and the Leader of the Council, add to that draft Code provisions, which they consider appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests

## **6. Dealing with Misconduct Complaints**

### **6.1 “Arrangements”**

6.1.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breaches of the Code of Conduct both by Borough Council members and by Parish Council members and such complaints can only be dealt with in accordance with such “arrangements”.

6.1.2 The “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the Code of Conduct.

6.1.3 The Act repeals the requirements for separate Allegations, Review and Hearings sub-committees and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed as the statutory provisions no longer give Standards Committees or Monitoring Officers special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

### **6.2 Decision whether to investigate a complaint**

6.2.1 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility and to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and together with the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. The decision whether to investigate needs to be taken against clear assessment criteria. These are set out at Appendix 2 of the draft “Arrangements”.

6.2.2 These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge.

6.2.3 For this purpose it would be appropriate that the Monitoring Officer makes a report to the Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committees attention areas where training or other action might avoid further complaints, and keep the Committee advised or progress on investigations and costs.

### 6.3 “No Breach of the Code” finding on investigation

6.3.1 Where a formal investigation finds no evidence of a failure to comply with the Code of Conduct, the current requirement is that this is reported to the Allegations Sub-Committee and the Sub-Committee takes the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to the Standards Committee if he feels appropriate.

6.3.2 It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him to get an overview of current issues and pressures and that the Monitoring Officer provide a summary report of each such investigation to the Standards Committee for information.

### 6.4 “Breach of the Code” finding on investigation

6.4.1 Where a formal investigation finds evidence of a failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution and avoid the necessity for a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree to this as a resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

6.4.2 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings Panel constituted as a Sub-Committee of the Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Sub-Committee can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

### 6.5 Action in response to a Hearing finding of a failure to comply with the Code

6.5.1 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the Council could take in respect of the member is limited



and must be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than “punishing” the member concerned. Any actions taken should be proportionate and commensurate with the circumstances of the particular case. In practice this might include the following:

- 6.5.1.1 Reporting its findings to Council (or to the Parish Council) for information;
- 6.5.1.2 Recommending to Council that the member be issued with a formal censure or reprimand (or to the Parish Council)
- 6.5.1.3 Recommending to the member’s Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 6.5.1.4 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 6.5.1.5 Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- 6.5.1.6 Removing (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- 6.5.1.7 Withdrawing (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 6.5.1.8 Excluding (or recommend that the Parish Council exclude) the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

6.5.2 The Act creates a particular difficulty in respect of Parish Councils, as it does not give the Standards Committee any power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Sub-Committee as a Joint Committee and Joint Sub-Committees with the Parish Councils and seek the delegation of powers from Parish Council to the Sub-Committee so that the Sub-Committee can effectively take decisions on any actions on behalf of the particular Parish Council.

## 6.6 Appeals

6.6.1 There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable or if it were taken improperly or if it sought to impose a sanction which the authority had no power to impose.

6.7 Draft “Arrangements” have been prepared by the Public Law Partnership which are attached to this report at Appendix C.

### **Recommendation 3A**

That the Monitoring Officer be instructed to prepare and submit to Council for approval “arrangements” as follows:

- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints for failure to comply with the Code of Conduct
- (b) That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to the Standards Committee on the discharge of this function;
- (c) Where the investigation finds no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned and to the Independent Person, and reporting the findings to the Standards Committee for information;
- (d) Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek a resolution in appropriate cases, with a summary report for information to the Standards Committee. Where such resolution is not appropriate or not possible, he is to report the investigation findings to a Sub-Committee of the Standards Committee for a hearing;
- (e) That Council delegate to the Sub-Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:
  - Reporting its findings to Council (or to the Parish Council) for information;
  - Recommending to Council that the member be issued with a formal censure or reprimand (or to the Parish Council)
  - Recommending to the member’s Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Panels of the Council;
  - Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
  - Removing (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
  - Withdrawing (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
  - Excluding (or recommend that the Parish Council exclude) the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

### **Recommendation 3B**

That a meeting be arranged between the Chair of the Standards Committee and the Leader of the Council and representatives of Parish and Town Councils with the Borough to discuss how the new system can best be operated.

## **7. Independent Person(s)**

The “arrangements” adopted by Council must include provision for the appointment by the Council of at least one Independent Person.

### **7.1 “Independence”**

The Independent Person must be appointed through a process of public advertisement, application and appointed by a positive vote of a majority of all members of the Borough Council (not just of those present and voting).

A person is considered not to be “independent” if:

7.1.1. he is, or has been within the last 5 years, an elected or co-opted member or an officer of the Borough Council or of any of the Parish Councils within its area;

7.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Borough Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent members of Standards Committees from being appointed as an Independent Person); or

7.1.1 he is a relative or close friend of a current elected or co-opted member or officer of the Borough Council or any Parish Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises-

- (a) the candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse of civil partner of anyone within Paragraphs (c), (d) or (e);  
or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

### **7.2 Functions of the Independent Person**

The functions of the Independent Person(s) are-

7.2.1 they must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action

to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any resolution of the complaint, or on any finding of a breach and on any decision on action as a result of that finding);

7.2.2 They may be consulted by the authority in respect of a standards complaint at any other stage; and

7.2.3 They may be consulted by a member or co-opted member of the Borough Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

### 7.3 How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

### 7.4 Remuneration

7.4.1 As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

7.4.2 In comparison to the current Chair of the Standards Committee, the role of the Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Sub-Committee, but not to be a formal member of the Committee or Sub-Committee (he/she could be co-opted as a non-voting member but cannot chair as the Chair must exercise a second or casting vote). He/she will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer.

7.4.3. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint.

7.4.4. This report suggests that the Independent Person also be involved in the resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

## 7.5 Appointment

7.5.1 It is proposed that the Public Law Partnership place as single advert for Independent Persons for all Councils across Essex saving advertising costs etc. It will however fall to each Council to interview and appoint the Independent Person(s).

### **Recommendation 4 –**

- (a) That the Monitoring Officer, in consultation with the Chair of the Standards Committee and the Leader of the Council, and with the advice of the Head of Corporate Management be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Committee.
- (b) That the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons
- (c) That a Committee comprising the Chair and 3 other members of the Standards Committee be set up to short-list and interview candidates and to make a recommendation to Council for the appointments.

## **8. The Register of Members' Interests**

### 8.1 The Register of Members' Interests

8.1.1. The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests". The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the Borough Council offices and on the Borough Council's website.

8.1.2. At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.

8.1.3. The provisions of the Act in respect of the Code of Conduct require any authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

8.1.4. The Monitoring Officer is required by the Act to set up and maintain registers of interests for each Parish Council within the Borough and to make them available for inspection at the Borough Council offices and on the Borough Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

## 8.2 Registration on election or co-option

- 8.2.1 Each elected or co-opted member must register all Disclosable Pecuniary Interests within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 8.2.2 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 8.2.3 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
- 8.2.4 The preparation and operation of the register, not just for the Borough Council but also for each Parish Council within the Borough, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than Disclosable Pecuniary Interests. There is no provision for the Borough Council to recover any costs from Parish Councils.

### **Recommendation 5**

- (a) That the Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
- (b) That the Monitoring Officer ensure that all members are informed of their duty to register interests;
- (c) That the Monitoring Officer prepare and maintain new registers of members' interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and
- (d) That the Monitoring Officer arrange to inform and train Parish and Town Clerks on the new registration arrangements.

## **9. Disclosure of Interests and Withdrawal from Meetings**

As set out above, Disclosable Pecuniary Interests are broadly equivalent to prejudicial interests, but with important differences. So:

- 9.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or panel, or of Cabinet or a Cabinet committee, and is aware that he/she has a Disclosable Pecuniary Interests in any matter being

considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

- 9.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and the nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the Disclosable Pecuniary Interests, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, members of the public attending the meeting will in future need to read the register of members’ interests, as registered interests will no longer be disclosed at the meeting which appears not to be consistent with the Government’s transparency agenda.
- 9.3 Where the member does make a disclosure of a Disclosable Pecuniary Interests, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 9.4 If a member has a Disclosable Pecuniary Interests in any matter, he/she must not-
- 9.4.1 Participate in any discussion of the matter at the meeting. The Act does not define “discussion” but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
- 9.4.2 Participate in any vote on the matter
- Unless he/she has obtained a dispensation allow him/her to speak and/or vote.
- 9.5 Failure to comply with the requirements (paragraphs 9.2, 9.3 or 9.4 above) becomes a criminal offence, rather than leading to sanctions;
- 9.6 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than Disclosable Pecuniary Interests, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.
- 9.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and panels, but can also apply to Cabinet and Cabinet Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of the Code of Conduct, although a meeting could vote to exclude the member.

### **Recommendation 6**

The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

## **10. Disclosure and Withdrawal in respect of matters to be determined by a Single Member**

- 10.1 Matters can be decided by a single member acting alone where the member is Cabinet Member acting under delegated Portfolio powers, or where the member is a Ward Councillor and the Council has chosen to delegate powers to Ward Councillors.
- 10.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a Disclosable Pecuniary Interest in that matter-
  - 10.2.1 Unless the Disclosable Pecuniary Interest is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a Disclosable Pecuniary Interest; and
  - 10.2.2 He/she must take no action in respect of that matter other than to refer it to another person or body to take the decision
- 10.3 Standing Orders can then provide for the exclusion of the member from any meeting whilst any discussion or vote takes place on the matter.
- 10.4 Note that the Act here effectively removes the rights of a member with a prejudicial interest to make representations as a member of the public which is currently permitted under Paragraph 12(2) of the current Code of Conduct.

### **Recommendation 7**

The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member acting alone must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

## **11. Sensitive Interests**

- 11.1 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
- 11.2 Where a member is concerned that disclosure of the detail of an interest (either a Disclosable Pecuniary Interest or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interest would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- 11.3 If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.



## 12. Dispensations

- 12.1 The provisions on dispensations are significantly changed by the Act.
- 12.2 At present, a member who has a prejudicial interest may apply to the Standards Committee for a dispensation on 2 grounds:-
- 12.2.1 That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of the Standards Committee); and
- 12.2.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be in appropriate).
- 12.3 In future, a dispensation will be able to be granted in the following circumstances –
- 12.3.1 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 not be quorate as a result;
- 12.3.2 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 the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- 12.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- 12.3.4 That, without a dispensation, no member of the Cabinet would be able to participate on this matter (so, the assumption is that, where the Cabinet would not be quorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- 12.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 12.4 Any grant of a dispensation must specify how long it lasts for, up to maximum of 4 years.
- 12.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Act gives discretion for this power to be delegated to the Standards Committee or a Sub-Committee, or to the Monitoring Officer.

- 12.6 Grounds 12.3.1 and 12.3.4 above are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”.
- 12.7 Grounds 12.3.2, 12.3.3 and 12.3.5 are rather more objective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with the Standards Committee, after consultation with the Independent Person.

### **Recommendation 8**

That Council agrees to delegate the power to grant dispensations:

- (a) on Grounds set out in Paragraphs 12.3.1 and 12.3.4 of this report to the Monitoring Officer with an appeal to the Standards Committee, and
- (b) on Grounds set out in Paragraphs 12.3.2, 12.3.3. and 12.3.5 of this report to the Standards Committee, after consultation with the Independent Person.

## **13. Transitional arrangements**

13.1 Regulations under the Act will provide for:

13.1.1 Transfer of Standards for England cases to local authorities following the abolition of Standards for England;

13.1.2 A transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;

13.1.3 Removal of the power of suspension from the start of the transitional period; and

13.1.4 Removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

## **14. Strategic Plan References**

14.1 The Council’s ethical arrangements forms parts of the Council’s commitment to customer excellence which underpins the Council’s Strategic Plan vision.

## **15. Financial Considerations**

15.1 None.

## **16. Equality, Diversity and Human Rights Implications**

16.1 No particular implications.

**17. Publicity Considerations**

17.1 Publicity will have to be provided for the new arrangements to enable members of the public to know how to make a complaint. This will be achieved via amendment to the existing Standards page of the Council website. In addition a new section will be required to deal with Members Interests and those of Parish Councils.

**18. Consultation Implications**

18.1 None.

**19. Community Safety Implications**

19.1 None

**20. Health and Safety Implications**

20.1 None

**21. Risk Management Implications**

21.1 None.

## Standards Committee Terms of Reference

<b>STANDARDS COMMITTEE</b>	
<p><b>Appointed by:</b></p> <p>The Council, in accordance with the provisions of S101 &amp; S102 Local Government Act 1972 and Regulations made thereunder.</p> <p>Appointment of a Standards Committee shall be by full Council</p>	<p><b>Number of members:</b></p> <p>7 Councillors appointed proportionally (of whom 1 member may be a member of the Cabinet nominated by the Leader of the Council)</p> <p>Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members</p>
<p><b>Chair and Vice-Chair appointed by:</b></p> <ol style="list-style-type: none"> <li>1. The Chair will be elected by the Committee.</li> <li>2. There will be one Deputy Chair, who shall be elected by the Committee</li> <li>3. The Deputy-Chair shall deputise for the Chair in his or her absence.</li> </ol>	<p><b>Political Proportionality:</b></p> <p>Rules of political proportionality apply.</p> <p><b>Substitutes:</b></p> <p>Substitutes are permitted for the Standards Committee.</p> <p><b>Frequency:</b></p> <p>At least quarterly.</p> <p><b>Venue:</b></p> <p>As set out in the approved Calendar of Meetings.</p>
<p><b>Independent Person:</b></p> <p>Appointment approved by full Council in accordance with the provisions of Section 28(6) and (7) of the Localism Act 2011</p>	<p><b>The Independent Person:</b></p> <p>The Independent Person be invited to attend the meetings of the Standards Committee</p>
<p><b>Quorum:</b></p> <p>At least 3 voting members of the Committee</p>	

### **Terms of Reference**

The Standards Committee will have the following roles and functions:

1. promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council;
2. advising the Council on the adoption or revision of the Members' Code of Conduct;
3. advising and assisting Parish Council(s) and Councillors to maintain high standards of conduct
4. advising the Council on the adoption or revision of the Members' Code of Conduct;
5. to receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the Council's assessment criteria
6. receiving reports from the Monitoring Officer and assessing the operation and effectiveness of the Members' Code of Conduct;
7. advising, training or arranging to train Members and Co-opted Members on matters relating to the Members' Code of Conduct;
8. assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
9. to create a Hearings Sub-Committee to hear and determine complaints about Members and Co-opted Members referred to it by the Monitoring Officer;
10. to conduct hearings on behalf of the Parish Councils and to make recommendation to Parish Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with the Code of Conduct;
11. informing Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints
12. advising the Council upon the contents of and requirements for codes/ protocols/ other procedures relating to standards of conduct throughout the Council
13. to grant dispensations after consultation with the Independent Person pursuant to Sections 33(2) (b), (c) and (e) of the Localism Act 2011
14. to hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Sections 33(2)(a) and (d) of the Localism Act 2011
15. an overview of the Council's complaint handling procedure and Local Government Ombudsman investigations
16. dealing with other matters as determined by the Council from time to time.

<b>STANDARDS COMMITTEE</b>	
<b>HEARINGS SUB-COMMITTEE</b>	
<p><b>Appointed by:</b></p> <p>The Council, for the purposes of section 28(6 and (7) of the Localism Act 2011</p>	<p><b>Number of members:</b></p> <p>5 Councillors appointed from members of the Standards Committee.</p>
<p><b>Chair and Vice-Chair appointed by:</b></p> <p>The Chair shall be elected by the Sub-Committee at each meeting.</p>	<p><b>Political Proportionality:</b></p> <p>Rules of political proportionality apply.</p> <p><b>Substitutes:</b></p> <p>None.</p> <p><b>Frequency:</b></p> <p>As and when required.</p> <p><b>Venue:</b></p> <p>To be determined by the Monitoring Officer.</p>
<p><b>Quorum:</b></p> <p>At least 3 voting Members</p>	<p>Parish Councillor be invited to be co-opted as non-voting members in dealing with a complaint against a Parish Councillor</p>
<p><b>Independent Person:</b></p> <p>Appointment approved by full Council in accordance with the provisions of Section 28(6) and (7) of the Localism Act 2011</p>	<p><b>The Independent Person:</b></p> <p>The Independent Person to attend the meetings of the Standards Committee dealing with hearings into allegations of misconduct</p>

**Terms of Reference**

The Sub- Committee will have the following roles and functions:

1. to conduct a Hearing into an allegation that a Member or Co-opted Member has breached the Authority's Code of Conduct.
2. following a Hearing, make one of the following findings:
  - (a) That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing
  - (b) That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the Hearing
  - (c) That the Member has failed to comply with the Code of Conduct and that a formal resolution should be made to the Authority
3. The Sub-committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.
4. After making a finding the sub-committee shall, as soon as reasonably practicable provide written notice of its findings and the reasons for its decision to the Member and complainant.

# Colchester Borough Council

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## Code of Conduct for Members

### PART 1 GENERAL PROVISIONS

#### Introduction and interpretation

This Code of Conduct was adopted by the full council at its meeting on 2012 and is effective from 1 July 2012

As a member you are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code as a whole is consistent with “Nolan Principles” which are set out in Appendix 1 and the provisions of S29(1) Localism Act 2011

In this Code-

“meeting” means any meeting of:

- (a) the authority
- (b) the Executive of the authority
- (c) any of the authority’s or its executive’s committees, sub-committees, panels, joint committees, joint sub-committees or areas committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members
- (d) any briefings by officers and site visits organised by the authority

“member” includes a co-opted member.

#### **1. Who does the Code apply to?**

- (1) This Code applies to all members of Colchester Borough Council, including co-opted members.
- (2) It is your responsibility to comply with the provisions of this Code.

#### **2. What does the Code apply to?**

- (1) You must comply with this Code whenever you -



- (a) conduct the business of your authority, or
- (b) you are acting as a representative of your authority,
- (2) This Code has effect in relation to your conduct in your official capacity.
- (3) Where you act as a representative of your authority--
  - (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 your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **3. General obligations**

- (1) You must treat others with respect.
- (2) You must not--
  - (a) do anything which may cause your authority to breach any of the equality enactments
  - (b) bully any person;
  - (c) intimidate or attempt to intimidate any person who is or is likely to be--
    - (i) a complainant,
    - (ii) a witness, or
    - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

### **4. Confidential Information**

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.

## **5. Conferring an advantage or disadvantage**

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 your authority--
  - (i) act in accordance with your authority'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.

## PART 2 MEMBERS INTERESTS

### 6. Disclosable Pecuniary Interests

6.1 You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 6.2<sup>1</sup> below and is either:

- (a) An interest of yours
- (b) An interest of your spouse
- (c) An interest of your civil partner
- (d) An interest of a person you are living with as a spouse or civil partner

And in the case of paragraphs 6.1 (b) – 6.1 (c) you are aware that that other person has the interest

6.2 “Disclosable pecuniary interest” are defined by *(regulations still awaited)* and are:-

- (a) *(to be completed when regulations are issued)*

### 7. Other Pecuniary Interests<sup>2</sup>

7.1 You have a pecuniary interest in any business of your authority where either-

- (a) It relates to or is likely to affect:
  - i. any employment or business carried on by you;
  - ii. any person or body who employs or has appointed you;
  - iii. any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - iv. any person or body who has a place of business or land in your authority’s area, and in whom you have a beneficial interest in a class of securities of that person or body that

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<sup>1</sup> Regulations still awaited. Paragraphs 6.2 and 7 should be given further consideration when regulations are available

<sup>2</sup> Regulations still awaited. Paragraphs 6.2 and 7 should be given further consideration when regulations are available

- exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
- v. any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph (iv);
  - vi. any land in your authority's area in which you have a beneficial interest;
  - vii. any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (iv) is, the tenant;
  - viii. any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
  - ix. a decision in relation to that business might reasonably be regarded as affecting your financial position or financial position of a relevant person to a greater extent than the majority of-
    - 1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
    - 2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area

## **8. Non-Pecuniary Interests**

8.1 You have a non-pecuniary interest in any business of your authority where either:-

- (a) it relates to or is likely to affect-
  - i. any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - ii. any body-
    - 1. exercising functions of a public nature;
    - 2. directed to charitable purposes; or
    - 3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

of which you are a member or in a position of general control or management;

- iii. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
- iv. a decision in relation to that business might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-
  - (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (b) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's areas

## **9. "Relevant Persons"**

9.1 For the purposes of paragraphs 7.1(a) ix and 8.1(a) iv a relevant person is-

- (a) A member of your family or any person with whom you have a close association;
- (b) Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company or which they are directors;
- (c) Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) Any body of which such persons are a member or in a position of general control or management and to which you are appointed or nominated by your authority
- (e) any body of a type described in paragraph 8(a) i. and ii. of which such persons are members or in a position of general control or management

## **10. Disclosure of Interests**

10.1 Subject to sub-paragraphs 10.2 to 10.5, where you have a disclosable pecuniary interest, any other pecuniary interest or a non-pecuniary interest in any business of your authority and you are present at a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such

interest is registered on your register of Interests or for which you have made a pending notification

- 10.2 Sub-paragraph 10.1 only applies where you are aware or ought reasonably to be aware of the existence of the pecuniary interest
- 10.3 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 10.1 but by virtue of paragraph 14 (sensitive interests) details of the interest are not registered in your authority's published register of members' interest and that the interest is a disclosable pecuniary interest (if that is the case) but you need not disclose the nature of the interest to the meeting
- 10.4 Where you have a pecuniary interest in any business of your authority and a function of your authority may be discharged by you acting alone in relation to that business, you must ensure you notify the authority's monitoring officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business
- 10.5 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 10.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest
- 10.6 In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

### **11. Disclosure of Interests generally<sup>3</sup>**

- 11.1 Subject to sub-paragraph 11.2 where you have a pecuniary interest in any business of your authority you also have a disclosable pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.
- 11.2 You do not have a disclosable pecuniary interest in any business of your authority where that business-
  - i. does not affect your financial position or the financial position of a person or body described in paragraph 8.1 (a) i. and ii.;
  - ii. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.1 (a) i and ii; or

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<sup>3</sup> Regulations from the Secretary of State are currently awaited as to the definition of "pecuniary interests and disclosable pecuniary interests". This paragraph may become superfluous

- iii. relates to the functions of your authority in respect of-
  - i. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
  - ii. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
  - iv. an allowance, payment or indemnity given to members;
  - v. any ceremonial honour given to members; and
  - vi. setting council tax or a precept under the Local Government Finance Act 1992

## **12. Effect of Disclosable Pecuniary Interests on participation**

12.1 You may not-

- a. if present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority and
- b. you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and
- c. you are aware that sub-paragraph 12.1.b is met:
  - i. participate, or participate further, in any discussion of the matter at the meeting, or
  - ii. participate in any vote, or further vote, taken on the matter at the meeting

and must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the authority's proper officer

- d. exercise executive functions in relation to that business and
- e. seek improperly to influence a decision about that business

12.2 If a function of your authority may be discharged by a member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take

any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself)

12.3 If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered your must:-

- 12.3.1 Disclose the existence and nature of the interest in accordance with paragraph 10.1 (but subject to paragraph 10.3)
- 12.3.2 Withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from your authority's proper officer in a case where paragraph 12.3 applies immediately after making your representations or in any other case when the business is under consideration unless you have obtained a dispensation from your authority's proper officer



### PART 3 REGISTER OF MEMBERS INTERESTS

#### 13. Registration of Members' Interests

Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the authority

register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- i. disclosable pecuniary interests<sup>4</sup> as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time
  - ii. pecuniary interests referred to in paragraph 7 that you have
- (c) Subject to paragraph 14, you must within 28 days of becoming aware of any new disclosable pecuniary interest as referred to in paragraph 6 that you, your spouses, civil partner or person with whom you live as if they were your spouse or civil partner or change to any disclosable pecuniary interest registered under paragraphs 13. i. or ii above

by providing written notification to your authority's Monitoring Officer

#### 14. Sensitive Information

- 14.1 Where you have a disclosable pecuniary interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.

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<sup>4</sup> Regulations from the Secretary of State are currently awaited as to the definition of "pecuniary interests and disclosable pecuniary interests"

- 14.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 14.1 is no longer sensitive information, notify your authority's monitoring officer
- 14.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

## **CODE OF CONDUCT**

### **APPENDIX 1**

#### **THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011**

##### **SELFLESSNESS**

To serve only the public interest and never improperly confer an advantage or disadvantage on any person

##### **INTEGRITY**

Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

##### **OBJECTIVITY**

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

##### **ACCOUNTABILITY**

To be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their Office.

##### **OPENNESS**

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

##### **HONESTY**

Not to place themselves in situations where their honesty may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of such behaviour.

##### **LEADERSHIP**

Should promote and support these principles by leadership and by example and should always act in a way that secures or preserves public confidence.



**Colchester Borough Council**  
**Standards Committee**  
**Councillor Code of Conduct**

**Arrangements for dealing with complaints**

These arrangements came into effect on 1 July 2012

**Introduction**

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Colchester Borough Council or of a parish council, town council or community council (referred to as a parish council in this document) within the Borough of Colchester has failed to comply with the Councillors’ Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Borough Council must have in place “arrangements” under which allegations that a member or co-opted member of the Borough Council (or of a parish council within the Borough of Colchester), or of a Committee or Panel of the Borough Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Borough Council to appoint at least 1 Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Borough Council at any other stage, or by a member (or a member or co-opted member of a parish council) against whom an allegation has been made. Both members and co-opted members are referred to as councillors in this document for ease of reference.

**2. The Code of Conduct**

- 2.1 The Borough Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Borough Council’s website ([www.colchester.gov.uk/standards](http://www.colchester.gov.uk/standards)) and on request from Reception at the Borough Council Offices.

- 2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect any website operated by the Parish Council or request the parish clerk to allow you to inspect the Parish Council's Code of Conduct.

### **3. Making a complaint**

- 3.1 If you wish to make a complaint, please write to:

The Monitoring Officer  
Colchester Borough Council  
Rowan House, 33 Sheepen Road  
Colchester CO3 3WG.

or by email to:

[andrew.weavers@colchester.gov.uk](mailto:andrew.weavers@colchester.gov.uk)

- 3.2 The Monitoring Officer is a senior officer of the Borough Council who has statutory responsibility for maintaining the register of councillors' interests and who is responsible for administering the system in respect of complaints of councillor misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Borough Council's website, next to the Code of Conduct, and is available on request from Reception at the Borough Council Offices.
- 3.4 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent.
- 3.5 The Borough Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

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3.7 The Complaints Procedure Flowchart is attached at Appendix 1 for your information.

**4. Will your complaint be investigated?**

4.1 The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:

4.1.1 merits no further investigation

4.1.2 merits further investigation

4.1.3 should be referred to the Standards Committee

4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Borough Council's Assessment Criteria contained at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the councillor against whom your complaint is directed.

4.3 Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the councillor accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the councillor or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

**5. How is the investigation conducted?**

- 5.1 The Borough Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the Borough Council, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents needs to be seen, and who needs to be interviewed.
- 5.3 The Investigating Officer or Monitoring Officer will normally write to the councillor against whom you have complained and provide him/her with a copy of your complaint, and ask the councillor to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the councillor, or delay notifying the councillor until the investigation has progressed sufficiently.
- 5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the councillor concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.5 Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.

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

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the councillor concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

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

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Hearings Sub-Committee or in consultation with the Independent Person seek an informal resolution.

**7.1.1 Informal Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Borough Council's Standards Committee (and the Parish Council) for information, but will take no further action.

**7.1.2 Hearing**

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Hearings Sub-Committee which will



conduct a hearing before deciding whether the councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the councillor.

The Borough Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/his report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The councillor will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the councillor did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the councillor did fail to comply with the Code of Conduct, the Chair will inform the councillor of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the councillor's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the councillor an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**8. What action can the Standards Sub-Committee take where a member has failed to comply with the Code of Conduct?**

8.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-

8.1.1 Publish its findings in respect of the councillor's conduct;

- 8.1.2 Report its findings to Council (or to the Parish Council) for information;
  - 8.1.3 Recommend to Council (or to the Parish Council) that the councillor be issued with a formal censure or be reprimanded
  - 8.1.4 Recommend to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to Council or to Committees) that the councillor be removed from any or all Committees or Panels of the Council;
  - 8.1.5 Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - 8.1.6 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the councillor;
  - 8.1.7 Remove (or recommend to the Parish Council that the councillor be removed) from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish Council);
  - 8.1.8 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the councillor by the Council, such as a computer, website and/or email and internet access; or
  - 8.1.9 Exclude (or recommend that the Parish Council exclude) the councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.
- 8.2 The Sub-Committee has no power to suspend or disqualify the councillor or to withdraw the councillor's basic allowance or any special responsibility allowances.
- 8.3 Any actions recommended by the Sub-Committee should be proportionate and commensurate with the circumstances of the particular case.

## **9. What happens at the end of the hearing?**

- 9.1 At the end of the hearing, the Chair will state the decision of the Standards Hearings Sub-Committee as to whether the councillor failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

- 9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the councillor (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

## **10. Who are the Standards Hearings Sub-Committee?**

- 10.1 It is a Sub-Committee comprising of Councillors sitting on the Council's Standards Committee.
- 10.2 The Standards Committee has decided that it will comprise a maximum of five Councillors of the Council, including not more than one member of the Council's Cabinet and comprising councillors drawn from all political groups. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council. If the councillor complained about is a member of a Parish Council a parish councillor who is a co-opted member of the Standards Committee will also be invited to attend the Sub-Committee.
- 10.3 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the councillor's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11. Who is the Independent Person?**

- 11.1 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 the Borough Council.
- 11.2 A person cannot be "independent" if he/she:
- 11.2.1 is, or has been within the past 5 years, a member, co-opted member or officer of the Borough Council;
  - 11.2.2 (is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the Borough of Colchester), or

11.2.3 is a relative or close friend, of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose, a “relative” means:

- 11.2.3.1 spouse or civil partner;
- 11.2.3.2 living with the other person as husband and wife or as if they were civil partners;
- 11.2.3.3 grandparent of the other person;
- 11.2.3.4 a lineal descendent of a grandparent of the other person;
- 11.2.3.5 a parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2; or
- 11.2.3.6 a spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or
- 11.2.3.7 living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.

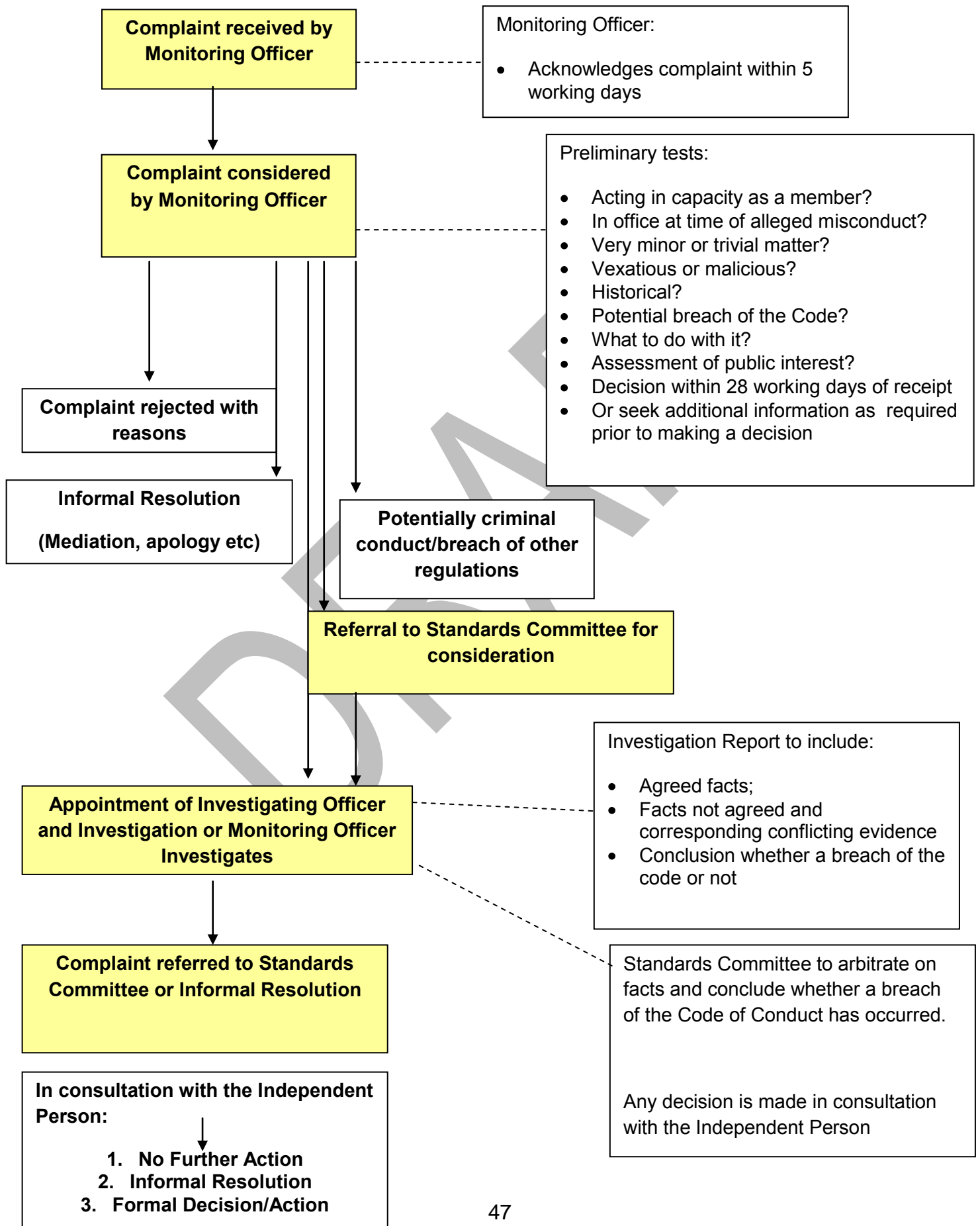
## **12. Revision of these arrangements**

The Borough Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **13. Appeals**

- 13.1 There is no right of appeal for you as complainant or for the councillor against a decision of the Monitoring Officer or of the Sub-Committee.
- 13.2 If you feel that the Borough Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

### Complaints Procedure Flowchart



**Colchester Borough Council**

**STANDARDS COMPLAINTS ASSESSMENT CRITERIA**

**Complaints which would not normally be referred for investigation**

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; e.g. that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the councillor complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

**Complaints which may be referred to the Standards Committee**

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

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3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate.

**Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and councillors' time. This is an important consideration where the complaint is relatively minor.**

**STANDARDS COMPLAINTS INVESTIGATION PROCEDURE**

( to follow)

DRAFT



**Colchester Borough Council**  
**STANDARDS COMMITTEE**  
**HEARINGS SUB-COMMITTEE PROCEDURE**

<u>Item No.</u>	<u>Procedure</u>
	<b><u>Quorum</u></b>
1.	<p>1.1. Three members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Parish Councillor a non voting Parish member of the Standards Committee may be present.</p> <p>1.3. The Sub-Committee shall nominate a Chairman for the meeting</p>
	<b><u>Opening</u></b>
2.	<p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones etc.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position.</p>
	<b><u>The Complaint</u></b>
3.	<p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement).</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer</p>

<b><u>The Councillor's case</u></b>	
4.	<p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative).</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Sub-Committee may question the Councillor and/or any witnesses.</p>
<b><u>Summing Up</u></b>	
5.	<p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
<b><u>Decision</u></b>	
6.	<p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision.</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p>6.2.1 The Sub-Committee decides that the Councillor has failed to follow the Code of Conduct; or</p> <p>6.2.2 The Sub-Committee decides that the Councillor has not failed to follow the Code of Conduct</p> <p>6.3 The Sub-Committee will give reasons for their decision</p> <p>6.4 If the Sub-Committee decides that the Councillor has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Councillor as to:</p> <p>6.4.1 Whether any action should be taken and</p> <p>6.4.2 What form any action should take</p> <p>6.5 The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person.</p> <p>6.6 On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council).</p>

6.7	The Sub-Committee will consider whether it should make any recommendations to the Borough Council (or in relation to a Parish Councillor to the Parish Council) with a view to promoting high standards of conduct among councillors.
6.8	The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's findings to be published.

DRAFT



## Standards Committee

Item  
**6**

23 March 2012

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Standards Committee Annual Report 2011/2012		
Wards affected	Not applicable		

**This report recommends that the committee approves its  
Annual Report for 2011/2012**

### 1. Decision(s) Required

- 1.1 To consider and approve the Standards Committee Annual Report for 2011/2012 and to recommend to the Full Council that it be noted.
- 1.2 To authorise the Monitoring Officer in consultation with the Chairman to make any necessary changes to the Annual Report to give effect to the Committees activities up to the end of March 2012.

### 2. Background

- 2.1 An Annual report is a method by which the Committee can inform the Council and the public of its activities and raise awareness of ethical issues both within the Borough Council and the Town and Parish Council's situated in the Borough. An Annual Report is seen as good practice and attached to this report is a draft fourth and what will be the final Annual report for the current Committee which covers the period from April 2011 to March 2012.
- 2.3 The draft Annual Report highlights particularly the work undertaken by the Sub-Committees in dealing with the Local Assessments of allegations made against members. The Committee is also requested to recommend the Annual Report to Council for its information.
- 2.4 The draft Annual report also recognises the impact of the changes being made by the Localism Act 2011 and how the standards regime will work in the future.

### 3. Strategic Plan References

- 3.1 The Council's ethical arrangements forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

### 4. Financial Considerations

- 5.1 None.

### 5. Equality, Diversity and Human Rights Implications

- 5.1 No particular implications.

**6. Publicity Considerations**

6.1 The Annual Report will be published on the Council's website.

**7. Consultation Implications**

7.1 None.

**8. Community Safety Implications**

8.1 None

**9. Health and Safety Implications**

9.1 None

**10. Risk Management Implications**

10.1 None.



# **COLCHESTER BOROUGH COUNCIL**

## **STANDARDS COMMITTEE**

**Annual Report 2011/2012**

## **1. Introduction**

This is the fourth Annual Report of Colchester Borough Council's current Standards Committee and covers the period from 1 April 2011 to 31 March 2012. In reviewing the activities and looking back at issues highlighted in 2011/12, it also looks forward to next year.

The Borough Council is currently required by law to establish a Standards Committee which has an important role to play in providing training for and maintaining ethical conduct of Councillors. Article 9 and Part 3 of the Council's Constitution contain the requirements for and composition of the Standards Committee.

This is the final report of the current Standards Committee as following the commencement of the Localism Act 2011, the statutory Standards Committee will be abolished. It will be for the Council to determine whether it creates a new Standards Committee to promote and maintain high standards of conduct and deal with complaints under the new regime introduced by the Localism Act 2011.

## **2. Roles and functions of the Standards Committee**

The Committee's roles and functions are as follows:

- (a) To promote and maintain high ethical standards of conduct for elected and co-opted Members.
- (b) To help elected and co-opted Members to observe the Members' Code of Conduct.
- (c) To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/officer relations.
- (d) To monitor the effectiveness of the Members' Code of Conduct.
- (e) To train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.
- (f) To assess and review complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function.
- (g) To develop and adopt:
  - (i) Assessment criteria for dealing with complaints;
  - (ii) Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
  - (iii) Arrangements for dealing with complaints and publicising the arrangements;
  - (iv) Procedures for dealing with local investigations; and
  - (v) Such other provisions and procedures as may be required.
- (h) To establish and maintain the following three sub-committees each with their own terms of reference:

- Allegations Sub-Committee
  - Allegations Appeals Sub-Committee
  - Hearings Sub-Committee
- (i) To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and guidance issued by the Standards for England and in connection with this function; and
- (j) To develop and adopt procedures for dealing with such Hearings.
- (k) To grant dispensations to elected and co-opted Members with prejudicial interests.
- (l) To grant exemptions from politically restricted posts.
- (m) To maintain an overview of the Council's arrangements for dealing with complaints and Local Government Ombudsman investigations.
- (n) To undertake the functions set out at (a) to (k) above in respect of all Parish and Town Councils wholly or mainly within the Borough of Colchester and the Members of those Parish or Town Councils.

Part 5 of the Borough Council's Constitution contains its Ethical Framework comprising various Codes and protocols relevant to the functions of the Committee and in respect of which the Committee has previously given advice and made recommendations.

### **3. Composition**

The Committee comprises Independent Members, Parish Representatives and Borough Councillors. The Borough Council agreed, at its meeting on 18 May 2011, the membership of the Committee for the 2011/2012 municipal year as follows:

#### **Independent Members;**

- Mr D Coe (Chairman)
- Mr P Fitton (Deputy Chairman)
- Mr I Andrews
- Mr S Farmer
- Mr S Roberts-Mee

#### **Parish Representatives;**

- Councillor W Anderson
- Councillor M Bartier
- Councillor T Abnett

#### **Borough Councillors;**

- Councillor C Arnold
- Councillor N Chapman
- Councillor R Gamble
- Councillor H Spyvee



The Independent Members were appointed by the Borough Council following a public recruitment process and provide a valuable pool of experience. These Members will be required to stand down from their role upon the commencement of the Localism Act. The Borough Council thanks them for their contribution to the promotion and maintenance of high ethical standards of conduct amongst elected and co-opted Members.

The Parish Representatives are nominated annually to the Council by the Colchester Association of Local Councils. The Borough Councillors are appointed annually and are senior members who have had/are soon to have mayoral responsibilities.

The Committee wishes to express its gratitude for the contributions made by Mr Sven Farmer and Councillor T Abnett, both of whom died during the year.

The Committee wishes to express its appreciation for the high level of support it receives from the Monitoring Officer, Andrew Weavers and Democratic Services Officer, Richard Clifford.

#### **4. The Committee's Work Programme**

The Committee agreed a work programme for 2011/2012 which covered:

- Review of the Local Assessment process
- Review of the Council's Local Code of Corporate Governance
- Review and provision of training for Members on the Members Code of Conduct
- Review of the Whistleblowing Policy
- Review of the Council's Anti- Fraud and Corruption Policy
- Consideration of the Local Government Ombudsman's Annual Letter
- Scheduled meetings so as to be able to respond to complaints within time limits

#### **5. Main Areas of Work**

##### **5.1 Implementation of Local Assessment of Allegations Process**

In May 2008 the responsibility for the initial assessment of allegations whether or not councillors had failed to follow the Members Code of Conduct was transferred from Standards for England to local Standards Committees.

Following recommendations from Standards for England, the Committee created three Sub-Committees; Allegations Sub-Committee, Allegations Appeals Sub-Committee and the Hearings Sub-Committee. The Committee itself and each of its Sub-Committees are chaired by an Independent Member.

The Committee has a duty to ensure adequate publicity for the Local Assessment process and has kept this under review.

The Local Assessment process has required meetings of the Allegations Sub-Committee (which deals with the initial assessment of allegations) to be diarised monthly. In accordance with the law these meetings are held in private.

### During 2011/2012:

The Allegations Sub-Committee met on five occasions and considered five complaints. Two of which were in relation to Town and Parish Councillors and the remaining three Borough Councillors.

The Sub Committee made the following decisions:

- 3 complaints - no further action.
- 1 complaint – referred to Standards for England
- 1 complaint – referred to the Monitoring Officer for investigation

The Allegations Sub-Committee was able to consider the complaints within the recommended time limit of 20 days from receipt.

The Allegations Appeals Sub-Committee, (which hears requests for a review following a finding of no further action by the Allegations Sub-Committee) met once and upheld a decision of no further action.

The Hearings Sub-Committee, (which hears and determines the findings of an investigating officer's report where it is found that a Councillor has not followed the Code of Conduct) did not need to meet as there were no reports to be determined.

## **5.2 Review of the Local Assessment Process**

The Committee undertook a review of its experiences in operating the process and was satisfied that it was functioning correctly. It will keep this under annual review.

## **5.3 Review of Ethical Governance**

The Committee undertook a review of the Council's Anti-Fraud and Corruption Policy, Whistleblowing Policy, Money Laundering Policy and Investigation process which was subsequently endorsed by the full council.

## **5.4 Training for Members on the Code of Conduct**

Although there are impending changes to the Code of Conduct by the Localism Act 2011 the Committee reviewed the level of training that should be provided throughout the year for both the 60 Borough and the 255 Town and Parish Councillors in the 27 Town and Parish Councils situated in the Borough. The Independent Members ensured that at least one of them were present at each session.

The Committee were concerned that all Councillors receive adequate training on the Code of Conduct to ensure that they were up to date with developments and able to fulfil the functions for which they were elected in a proper manner. In the coming year the Committee will be facilitating further training and will be monitoring attendance particularly where there has been evidence of non-compliance with the Code.

## **6. Standards after the Localism Act 2011**

The future of Standards following the Localism Act 2011 is now more certain. It is anticipated that the new regime will come into force on 1 July 2012. The Committee is aware that its current composition will not survive the changes brought in by the Act. The Committee is mindful of new requirements for a different style of Standards Committee and the requirement for the Council to appoint an Independent Person to be a consultee. The Committee still has a role to play in recommending to the Council a new Code of Conduct and how it considers arrangements which are required to be put in place under the Localism Act 2011 will work.

There will be a training requirement for all councillors under the new Code of Conduct and the interests regime (the details of which are still awaited). In addition all Town and Parish Councils will be required to adhere to the new regime and be made aware of its implications. Accordingly the new Standards Committee will still have an important role to play in the continuing obligation under the Localism Act 2011 for the Council to ensure that it complies with its duty to promote and maintain high standards of conduct by members and co-opted members of the authority.

Until the new Localism Act 2011 regime comes into force the Ethical Framework remains in place, Councillors remain subject to the Code of Conduct and the Standards Committee responsible for its monitoring and enforcement.

## **7. Work Programme for 2012/2013**

The work programme looking forward will be a matter for the new Standards Committee to determine.

## **8. Conclusions**

In a busy year, the Committee has completed its work programme and is well placed to continue to face the continuing challenges of handling the initial assessment of allegations and progressing matters that it considers necessary to investigate. Colchester Borough Council and the Town and Parish Councils within the Borough continue to have a sound record in ensuring good standards of conduct.

It is our final recommendation that the Council continues to promote, maintain and enhance standards of conduct expected of elected members and co-opted members of the Colchester Borough Council and Town and Parish Councils within the Borough in accordance with the requirements of the Localism Act 2011.

Dated March 2012

**Derek Coe**  
**Chairman**

