

URGENT BUSINESS AND SUPPLEMENTARY INFORMATION

Council

16 May 2012

Agenda Item Number	Page	Title	Officer Responsible	Reason Not Included with Original Agenda
15.	(Pages 1 - 14)	Recommendations from Standards Committee	Head of Law and Governance	Meeting of Standards Committee held after agenda dispatch

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Council

Recommendations from Standards Committee

16 May 2012

Report of Head of Law and Governance

PURPOSE OF REPORT

To enable Council to consider the recommendations of Standards Committee with regard to the code of conduct to be adopted, and the statutory arrangements to be introduced to investigate and decide on allegations of breach, pursuant to the Localism Act 2011.

This report is public

Recommendations

Council is recommended to:

- (1) Adopt the Oxfordshire Code of Conduct (set out in the annex to the appended draft minutes) with effect from 1 July 2012 or such other date as is legislatively required ("the effective date") and that it be endorsed for adoption by the Town and Parish Councils in Cherwell District.
- (2) Establish a free standing Standards Committee from the effective date comprising 8 elected members (7 from the Conservative Group and 1 from the Labour Group with Group Leaders to confirm appointed and substitute members to the Head of Law and Governance prior to the effective date), with the power to co-opt town/parish council members as it sees fit, for the purpose of hearing and determining complaints of Councillor misconduct with the terms of reference set out at the annex to the appended draft minutes such Committee to replace the current Standards Committee.
- (3) Agree that two independent persons be appointed by Council at a future date on the recommendation of a panel comprising two members of the new Committee plus the Head of Law and Governance and to delegate authority to fix an initial allowance payment for such persons to the Head of Law and Governance in consultation with the Head of Finance and Procurement.
- (4) Agree to delegate authority to the Head of Law and Governance to take the necessary steps to establish a register of interests for District, Town and

Parish Councillors and the required arrangements (including a complaints procedure and a hearing procedure) pending formal consideration by the new Committee in due course.

- (5) That the terms of appointment of Dr Sadie Reynolds and Derek Bacon as independent members of the current Standards Committee be extended until the effective date.

Details

- 1.1 The Localism Act 2011 abolishes the current standards regime, including its mandatory code of conduct, and replaces it from the effective date with a new obligation on all Councils (including Town and Parish Councils) to adopt a code of conduct which is consistent with the 7 Nolan Principles of Public Conduct (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) and contains obligations to register and disclose new forms of interest called Disclosable Pecuniary Interests. The Council is also obliged to implement arrangements whereby allegations of breach of the code of conduct can be investigated and decisions on investigations can be made, albeit that most of the sanctions previously available to Standards for England or the current Standards Committee (such as suspension and disqualification) will be removed.
- 1.2 At its meetings in March and May 2012 the current Standards Committee has been considering the nature of the recommendations that it wishes to make to this meeting of Council which is the last one scheduled before the expected effective date of 1 July 2012. The Committee has been significantly hampered by the fact that awaited Regulations dealing with Disclosable Pecuniary Interests (which it will be a criminal offence to fail to register or disclose) have yet to be published. The draft minutes of the Committee meeting held last week on 10 May 2012 are appended.

Code of Conduct

- 1.3 The monitoring officers for all principal authorities in Oxfordshire have been keen to ensure as far as is possible the adoption of a common form of code to apply to members at all three tiers of local authority in the County (County, District and Town/Parish) both in the interests of general consistency but also to assist those many members who are twin and in some cases triple hatted. The Standards Committee has endorsed this approach and is recommending for adoption the form of Code which is found in the annex to the appended draft minutes. This version has been, or is in the process of being, adopted by all of the principal authorities in the County and, working in liaison with the Oxfordshire Association of Local Councils, all of the constituent Town and Parish Councils in each district will be encouraged to adopt this same version of the Code.

Elected Member Body

- 1.4 When Council last considered this matter in May 2011 during the early stages of the Localism Bill it resolved as follows:-

That the recommendations agreed by the Standards Committee on the approach Cherwell District Council should take in light of the proposals in the Localism Bill relating to the Standards Board regime, namely that the Standards Committee be abolished and responsibilities transferred to the Accounts Audit and Risk Committee, that a voluntary code of conduct be adopted and limited support continue to be given to the parish councils be noted.

However matters have changed significantly since then and what was at that stage a potential voluntary code to apply at principal authority level only has been replaced by a mandatory code (albeit with more discretion as to overall content than currently) to apply at both principal and Town/Parish levels. In the light of this the Standards Committee has reconsidered its position and is recommending that a free standing new Committee should be established. Unlike the current Standards Committee this new Committee, if approved, is required to be politically balanced and it will no longer be required or able to have independent and town/parish council members with a right to vote. It could, however, decide to co-opt non-voting members such as town/parish council representatives. Based on the recommended Committee size of 8 members this would result in the composition being 7 Conservative members and 1 Labour member. With reference to item 14 on this agenda this would result in the total number of Committee seats to be apportioned across the three Political Groups being 100, with 82 Committee seats allocated to the Conservative Group, 12 to the Labour Group and 6 to the Liberal Democrat Group which is an exact match.

Appointment of Independent Persons

- 1.5 The Council must appoint at least one independent person. These will not be members of the Committee and their functions are:-

- He/she 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 local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- He/she may be consulted by the authority in respect of a standards complaint at any other stage; and
- He/she may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

So as to ensure resilience of cover and also to avoid potential conflicts of interest the Standards Committee is recommending that two independent persons are appointed by Council in due course on the recommendation of a panel comprising two members of the new Committee and the Head of Law and Governance. While the assessment of an appropriate allowance rate for the role could be referred to the Independent Remuneration Panel in due course it is further recommended that delegated authority be granted to fix an initial rate of allowance in the short term.

Register of Interests and Implementation of Other Arrangements

- 1.6 As the necessary legislation to implement the requirements relating to the registration and disclosure of interests is still awaited it is not yet possible to seek approval to the form of the register or indeed the full extent of the necessary arrangements to be introduced for receiving and disposing of allegations of breach of the new code of conduct. Accordingly the Standards Committee is recommending that delegated authority be given to the Head of Law and Governance to establish the register and the accompanying arrangements, including a complaints procedure, with a view to formal endorsement of these in due course by the new Standards Committee.

Extension of Appointments

- 1.7 The terms of office of Dr Sadie Reynolds and Derek Bacon as independent members of the current Standards Committee are due to expire at the end of the 2011/12 year but, given the limited life expectancy of the current Committee, it is not considered appropriate to seek to appoint replacements so members are recommended to extend the terms of office of Dr Reynolds and Mr Bacon until the effective date.

Conclusion

- 1.8 The Standards Committee has met to determine its recommendations to Council and members are requested to consider and approve them as set out above.

Key Issues for Consideration/Reasons for Decision and Options

- 2.1 The following options have been identified. The approach in the recommendations is believed to be the best way forward.

Option One To accept the recommendations.

Option Two To amend the recommendations by adopting a different version of the code of conduct. This is not recommended as it would result in a different code applying in Cherwell District to the rest of Oxfordshire.

Option Three To amend the recommendations and allocate the standards function to the Accounts Audit and Risk Committee. This is not recommended for the reasons set out in the appended draft minutes.

Consultations

Financial There are no immediate financial implications at this stage. It is not envisaged at this stage that any allowance payments for independent persons will exceed the amounts currently paid to external members of the existing Committee.
Comments checked by Karen Curtin Head of Finance and Procurement,
Karen.curtin@cherwellandsouthnorthants.gov.uk

Legal These are dealt with in the report.
Comments checked by Kevin Lane Head of Law and Governance,
Kevin.lane@cherwellandsouthnorthants.gov.uk

Risk Management Without effective standards arrangements in place there is a risk to the council's reputation and the preferred recommendation outlined in the report mitigates reputational and legal risks.
Comments checked by Claire Taylor Corporate Performance Manager, Claire
Taylor@cherwellandsouthnorthants.gov.uk

Document Information

Appendix No	Title
1	Draft minutes of Standards Committee – 10 May 2012
Background Papers	
None	
Report Author	Kevin Lane, Head of Law and Governance
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Public Document Pack

Cherwell District Council

Standards Committee

Minutes of a meeting of the Standards Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 10 May 2012 at 6.30 pm

Present: Dr Sadie Reynolds (Chairman)
Derek Bacon (Vice-Chairman)

Councillor Andrew Beere
Councillor Fred Blackwell
Councillor Chris Heath
Councillor Russell Hurle
Councillor Douglas Williamson
Kenneth Hawtin
Councillor John Coley

Substitute Members: Councillor Ken Attack (In place of Councillor Timothy Hallchurch MBE)

Apologies for absence: Councillor Timothy Hallchurch MBE
Councillor James Macnamara
Councillor Rose Stratford
Councillor David Carr

Officers: Kevin Lane, Head of Law and Governance / Monitoring Officer
Natasha Clark, Team Leader, Democratic and Elections

12 **Declarations of Interest**

There were no declarations of interest.

13 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

14 **Urgent Business**

There was no urgent business.

15 **Minutes**

The minutes of the meeting held on 7 March 2012 were agreed as a correct record and signed by the Chairman.

The New Standards Regime - Proposed Arrangements

The Head of Law and Governance submitted a report which enabled the Committee to finalise its recommendations to Council on 16 May 2012 on the form of a code of conduct for members to be adopted with effect from the relevant legislative date (currently anticipated to be 1 July 2012) and on the nature, composition and terms of reference of the elected member body to be responsible for the arrangements that were statutorily required to ensure that the Council could investigate allegations of misconduct by district and parish councillors and determine an appropriate outcome. The report further sought to enable the Committee to recommend to Council the number of independent persons to be appointed, the appointment and remuneration process and the delegation of authority to the Monitoring Officer to enable the necessary legal arrangements to be introduced.

Code of Conduct

The Chairman reminded the Committee that at their March meeting, members had endorsed the proposed approach of the Monitoring Officers in Oxfordshire to seek to ensure, as far as practicable, the adoption of a common code at County, District and Parish levels.

In considering the proposed Oxfordshire Code of Conduct, some Members commented that it seemed relatively vague with no definition of exactly what pertained to breaking the Code. Other Members of the Committee countered that the Oxfordshire Code was very concise and was preferable to the LGA promoted Code. The Head of Law and Governance confirmed that the Code was currently being presented to all other Oxfordshire district councils and the county council for approval.

The Committee agreed that Council should be recommended to adopt the Oxfordshire Code of Conduct and that it be endorsed for adoption by Town and Parish Councils in the district.

Nature and Composition of Elected Member Body

The Committee was reminded that at their March meeting Members had indicated support for a free standing Standards Committee rather than the previously supported view that the role be subsumed by the Accounts, Audit and Risk Committee. The Committee noted that the draft Terms of Reference submitted by the Head of Law and Governance could apply to either a free standing committee or be added to the remit of the Accounts, Audit and Risk Committee.

In considering the nature and composition of the elected member body, the Committee reaffirmed their preference for a free standing Standards Committee comprising 8 members. The previously held view to transfer responsibilities to the Accounts, Audit and Risk Committee had been reached when it was anticipated a Code of Conduct would not be mandatory. However as this was now mandatory under the Localism Act 2011, the Committee agreed that it was appropriate to have a separate Committee to demonstrate independence. Additionally, as the district council retained responsibility for town and parish councils, members agreed that the Committee should have the power to co-opt as it felt appropriate. Members noted that the Committee

would be a Local Government Act 1972 Committee and therefore subject to political balance rules.

The Committee agreed that Council should be recommended to establish a free standing Standards Committee comprising 8 members, with the power to co-opt and the proposed terms of reference to replace the current Standards Committee.

Independent Persons

The Head of Law and Governance reminded the Committee that the Localism Act 2011 required that at least one independent person be appointed by full Council as part on the new arrangements. The independent person would not be a member of the new Standards Committee but could be invited to attend meetings.

The Committee had agreed at their March meeting that it would be appropriate to appoint two independent persons to avoid potential conflicts of interest and provide resilience.

In response to Members' questions, the Head of Law and Governance confirmed that it was anticipated that a transitional provision would be enacted whereby current independent members of Standards Committees would be able to apply to be independent persons if they resign before 30 June 2012. Independent Members would be advised according if the provision was enacted.

The Committee endorsed the approach presented by the Head of Law and Governance and agreed Council should be recommended to appoint two independent persons at a future date based on the recommendation of a panel comprising two members of the new elected members body and the Head of Law and Governance. Additionally, authority should be delegated to the Head of Law and Governance in consultation with the Head of Finance and Procurement to fix an initial allowance for the independent persons. The Committee also agreed that it would be useful to provide Council with a summary of the role of the Independent Persons.

Register of Interests

The Head of Law and Governance advised the Committee that as the Regulations dealing with disclosable pecuniary interests ("DPIs") had not yet been enacted it was not possible for any further consideration to be given to the form and content of the future Register of Interests prior to the 16 May 2012 meeting of Council. The Committee was therefore requested to recommend delegated authority to the Monitoring Officer to take the appropriate steps to establish the register and advise district, town and parish councillors accordingly.

The Committee stressed the importance of ensuring all councillors were aware of the new requirements and agreed to recommend to Council that authority be delegated to the Head of Law and Governance / Monitoring Officer to take the necessary steps to establish a register of interests and the required arrangements pending formal consideration by the elected member body in due course.

Resolved

- (1) That Council be recommended to adopt the Oxfordshire Code of Conduct (set out in the annex to these minutes as set out in the minute book) with effect from 1 July 2012 or such other date as is legislatively required ("the effective date") and that it be endorsed for adoption by the Town and Parish Councils in Cherwell District.
- (2) That Council be recommended to agree to establish a free standing Standards Committee comprising eight elected members, with the power to co-opt members as it sees fit, for the purpose of hearing and determining complaints of Councillor misconduct with the terms of reference set out at the annex to these minutes (as set out in the minute book) from the effective date to replace the current Standards Committee.
- (3) That Council be recommended to agree that two independent persons be appointed by Council at a future date on the recommendation of a panel comprising two members of the new Committee plus the Head of Law and Governance and to delegate authority to fix an initial allowance payment for such persons to the Head of Law and Governance in consultation with the Head of Finance and Procurement.
- (4) That Council be recommended to agree to delegate authority to the Head of Law and Governance/Monitoring Officer to take the necessary steps to establish a register of interests for District, Town and Parish Councillors and the required arrangements (including a complaints procedure and a hearing procedure) pending formal consideration by the new Committee in due course.

The meeting ended at 7.05 pm

Chairman:

Date:

Oxfordshire Version

1. This code of conduct is adopted pursuant to the council's duty to promote and maintain high standards of conduct by members and co-opted members¹ of the council.
2. This code applies to you as a member or co-opted member of this council when you act in that role and it is your responsibility to comply with the provisions of this code.

Selflessness

3. You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

Objectivity

4. In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

5. You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

Openness

6. You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

Honesty and integrity

7. You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

Leadership

8. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

¹ A "co-opted member" for the purpose of this code is, as defined in the Localism Act section 27 (4) "a person who is not a member of the council but who

- a) is a member of any committee or sub-committee of the council, or
- b) is a member of, and represents the council on, any joint committee or joint sub-committee of the council;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub committee".

GENERAL OBLIGATIONS

9. You must treat others with respect and ensure that you are aware of and comply with all legal obligations that apply to you as a member or co-opted member of the council and act within the law;
10. You must not bully any person.
11. You must not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the council.
12. You must not disclose information given to you in confidence by anyone, or information acquired by you of which you are aware, 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 legal advice provided that the third party agrees not to disclose the information to any other person, or
 - (iv) the disclosure is:
 - a) reasonable and in the public interest;
 - b) made in good faith and in compliance with the reasonable requirements of the council.
13. You must not improperly use knowledge gained solely as a result of your role as a member for your own personal advantage.
14. When making decisions on behalf of or as part of the council you must have regard to any professional advice provided to you by the council's officers.
15. When using or authorising the use by others of the resources of the council:
 - (i) you must act in accordance with the council's reasonable requirements;
 - (ii) you must make sure that you do not use resources improperly for political purposes and do not use them at all for party political purposes.

REGISTERING AND DECLARING INTERESTS

16. You must, within 28 days of taking office as a member or co-opted member, notify the council's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

17. You must disclose the interest at any meeting of the council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'².
18. Following any disclosure of an interest not on the council's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
19. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.

² A "sensitive interest" is described in the Localism Act 2011 as a member or co-opted member of a council having an interest, and the nature of the interest being such that the member or co-opted member, and the council's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Proposed Terms of Reference

The promotion and maintenance of high standards of conduct by members and co-opted members of the Council and the Town and Parish Councils in the Cherwell district.

The making of recommendations to Council on the adoption, revision or replacement of a code of conduct for members and co-opted members.

The approval and administration of arrangements under which allegations of breach of the code of conduct for members and co-opted members can be investigated and decisions on such allegations can be made.

The determination of items (if any) that must be entered in the Council's register of members' interests over and above any that are legally required.

The approval and administration of arrangements for the granting of dispensations to members and co-opted members so as to permit their participation in meetings despite the existence of a disclosable pecuniary interest.