

## **Meeting of the Council – 16th July, 2012**

### **Report of the Audit and Standards Committee**

#### **Localism Act, 2011 – The New Standards Arrangements**

##### **Purpose of Report**

1. To recommend necessary actions so as to implement the new standards arrangements.

##### **Background**

2. The Localism Act, 2011 was enacted on 15<sup>th</sup> November, 2011 and amongst its provisions was the repeal of the existing standards regime as set out in the Local Government Act, 2000. The Localism Act also introduced new lighter touch standards arrangements. These changes have a number of effects including:-
  - (a) That there is no longer a requirement for the Council to appoint a Standards Committee
  - (b) The current ten General Principles and National Model Code of Conduct for Members are repealed
  - (c) As a consequence of the above the requirement for separate Referrals, Review and Hearings Sub-Committees to hear and determine allegations that a Member may have breached the Code of Conduct are also repealed
  - (d) There is no longer a requirement to appoint Independent Members of a Standards Committee with a place on the Committee; and
  - (e) Member personal and prejudicial interests are abolished.
3. The new standards arrangements, which come into force with effect from 1<sup>st</sup> July, 2012, have a number of features with the intention of introducing a simpler and streamlined process for dealing with complaints about Members.

These are

- The adoption of a new Local Code of Conduct to replace the existing National Code
- The appointment of an Independent Person(s) to assist the Monitoring Officer in complaint and related standards matters. The Independent Person(s) will not have a place on the Audit and Standards Committee.

- The establishment of a new Register of Members' Interests
- The revision of arrangements in relation to interests disclosed by Members including those set out in the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012

As a consequence of the introduction of these features there will also be a need for

- A process for dealing with complaints
- Training to be arranged for Elected and Co-opted Members in the new arrangements; and
- Revised grounds for the granting of dispensations

### **Current Position**

4. In the light of the above changes the Council has already made a number of decisions and carried out work, prior to further information and regulations being received from Government on the changes.

The measures introduced include:-

1. The appointment at Annual Council on 17<sup>th</sup> May, 2012 of the new Audit and Standards Committee with revised Terms of Reference and functions including the residual standards functions;
2. Arrangements for the onward delegation of functions to the Director of Corporate Resources in relation to arrangements for the appointment of an Independent Person(s) up to and including the holding of interviews.
3. The inclusion in the Terms of Reference of the Committee of the appointment of any sub-committees to hear and determine complaints against Members and Co-opted Members referred to them by the Director of Corporate Resources; and
4. The onward delegation to the Director of Corporate Resources of the consideration, in conjunction with an Independent Person(s) of complaints made against a Member or Co-opted Member.

### **The Next Steps**

5. The following issues now require consideration:-

- (a) The Adoption of a New Local Code of Conduct

As indicated in paragraph 2(b) above the current ten general principles and the National Code of Conduct are repealed. However the Council will be required to either revise its existing Code or adopt a new Code of Conduct governing Elected and Co-opted Members' conduct when acting in that capacity.

The Local Government Association has issued a template for a new Members' Code of Conduct based on seven key principles. The Council's new Code of Conduct must, when viewed as a whole, be consistent with the seven principles. Guidance and advice has also been issued by the Department for Communities and Local Government and a number of professional bodies. Taking account of all the guidance received, a draft Dudley MBC Members' Code of Conduct is set out in the Appendix for consideration.

With regard to the registration and disclosure of interests, the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 have now been issued. These set out the Disclosable Pecuniary Interests that will require registration and disclosure. The seven categories of interest are broadly in line with current registerable financial interests.

Each elected and co-opted Member must register all Disclosable Pecuniary Interests within 28 days of becoming a Member. Failure, without reasonable excuse, to register will be a criminal offence with a penalty of a fine of up to £5,000 and disqualification from office for up to five years. The failure to register any other interests required by the Council would not be a criminal offence but would be a failure to comply with the Code of Conduct.

Consideration will need to be given to what other pecuniary and non-pecuniary interests should be included in the Code in addition to the Disclosable Pecuniary Interests. Interests other than Disclosable Pecuniary Interests have not been defined. A copy of the form for registering Member's Disclosable Pecuniary and other interests is attached to the Code of Conduct in the Appendix.

It is recommended that the current arrangements for disclosure of interests at all meetings at which Members are present continue and reference to this has been included in the new Local Code of Conduct and will be reflected in the Constitution.

Reference is also made to the granting of dispensations. The Act extends the current basis (that is where over half of the Council or Committee will be prevented from taking part in any discussion or the political balance of a meeting will be upset) for a dispensation to be granted to cover any instance where the number of Members affected would mean that the meeting was inquorate or all Members of the Cabinet would be excluded (that is extending the fifty percent rule) and where it is in the interests of the inhabitants of the area. As requests for dispensations often have to be dealt with urgently, it is recommended that the granting of dispensations be delegated to the Monitoring Officer, following consultation with the Chair of the Audit and Standards Committee and an Independent Person. The Monitoring Officer will, however, have discretion to refer requests for dispensations to the Standards Sub-Committee in appropriate circumstances.

(b) The Appointment of an Independent Person(s)

As indicated in the second bullet point of paragraph 4 above the Director of Corporate Resources has delegated authority to make arrangements for the appointment of an Independent Person(s) up to and including the holding of interviews.

Accordingly a recruitment pack for an Independent Person was drawn up and a newspaper advertisement placed on 29<sup>th</sup> May, 2012. Persons who wished to be considered for the position of Independent Person applied for a recruitment pack and returned application forms by Thursday, 21<sup>st</sup> June, 2012. The date for interviews was 25<sup>th</sup> June, 2012. Following the holding of interviews recommendations, as set out in paragraph 10 below, were made and agreed as to appointment(s), to be recommended to the Council for approval. The Regulations also provide for making interim arrangements should this be necessary and in this regard two former Independent Members of the former Standards Committee are also recommended for appointment, again as set out in paragraph 10 below.

(c) A Process for Dealing with Complaints

As indicated above Independent Person(s) are required so as to assist the Monitoring Officer in dealing with complaints and related standards matters.

Given the repeal of the current arrangements for hearing complaints requiring the establishment of Sub-Committees it is for the Council to establish its own, simpler, process, which can include delegation of decisions on complaints.

As the statutory provisions no longer give a Standards Committee or Monitoring Officer special powers to deal with complaints it will be necessary for Councils to delegate appropriate powers to any Committee or Sub-Committee that may be given the remit, and to the Monitoring Officer.

The Terms of Reference and functions of the Audit and Standards Committee approved at Annual Council on 17<sup>th</sup> May, 2012 include provision for the appointment of any Sub-Committees, as appropriate, to hear and determine complaints against Members and Co-opted Members under the provisions of the Members Code of Conduct and in accordance with locally agreed procedures.

A Standards Sub-Committee, with proportionality waived as is currently the case for Licensing Sub-Committees, was established comprising four Members of the Audit and Standards Committee, two from each political group.

Given the delegation to the Director of Corporate Resources, in his role as the Monitoring Officer, for the consideration in conjunction with an Independent Person(s) of complaints made against a Member or Co-opted Member it should be noted that the Monitoring Officer and Independent Person would only refer particular complaints to the Sub-Committee where the Monitoring Officer considers that it would be inappropriate for him to take a decision on the matter.

It should also be noted that the sanctions available, following a finding of a Member breach of the Code of Conduct, have also been revised, and based on available advice, it is considered that the following are lawfully available subject to the particular facts and circumstances and are proportionate:-

- Reporting the findings to Council;
- Recommending to the Member's Group Leader that the Member in question be removed from the Cabinet, any or all Committees or Sub-Committees of the Council or Other Bodies subject to statutory and constitutional requirements;
- Formal letter from the Council or the Chair of the Audit and Standards Committee to the Member in question;
- Formal censure through a motion.
- Withdrawal of facilities (eg: ICT)

The Sub-Committee referred to would have the power to determine the appropriate course of action in respect of any complaint heard.

(d) Training

Following consideration of the new arrangements by the Audit and Standards Committee, and subject to the approval of Council, arrangements are in hand for a number of training sessions dealing with the new Code of Conduct and Member interests so that all Elected Members and Co-opted Members can be informed of the revised arrangements ideally prior to Committees meeting in September, 2012. Attendance at the training will be mandatory for all elected and co-opted Members.

The Leaders of both political groups represented on the Council have been consulted on the proposals concerning the adoption of the new Members' Code of Conduct and the associated issues referred to above.

6. The Audit and Standards Committee at its meeting held on 3<sup>rd</sup> July, 2012, considered this report and resolved to recommend to Council to approve the actions referred to in paragraph 10 below.

## **Finance**

- 7 The financial implications arising from this report will be met from existing resources.

## **Law**

8. The relevant provisions are contained in the Localism Act, 2011 together with regulations, orders and statutory guidance issued by the Secretary of State.

## **Equality Impact**

9. The new Local Code of Conduct requires Elected Members and Co-opted Members to behave in a manner that is consistent with seven overriding principles so as to achieve best value for their residents and maintain public confidence in the Authority. The principles will have a bearing on issues such as equality.

## **Recommendations**

10. That the Council be recommended to:-
  1. Adopt a new local Members' Code of Conduct as set out in Appendix 1
  - 2(a) Appoint the Bishop of Dudley and Mrs Valerie Ainsworth as Independent Persons for the period ending with the annual meeting of the Council on 16<sup>th</sup> May, 2013, pursuant to the transitional provisions contained in Regulations made under the Localism Act, 2011.
  - (b) Appoint Mr Fred Bell and Mr Thomas Turner as Independent Persons under the provisions of the Localism Act 2011, for a four year period ending with the annual meeting of the Council in May, 2016.
  3. Endorse the arrangements for registering and declaring interests as referred to in the Code of Conduct and the form set out in the Appendix.
  4. Authorise the Monitoring Officer to make consequential amendments to the Constitution and Procedure Rules to include references to the revised arrangements for the disclosure of Members' interests.
  5. Authorise the Monitoring Officer, in consultation with an Independent Person and the Chair of the Audit and Standards Committee, to grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members' Code of Conduct subject to individual requests being referred to the Standards Sub-Committee in appropriate circumstances.
  6. Authorise the Monitoring Officer to produce local arrangements and procedures for dealing with standards allegations and complaints made under the Members' Code of Conduct.

7. Approve the provision of mandatory training to all Members of the Council and Co-opted Members on the provisions of the local Members' Code of Conduct.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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**Chair of the Audit and Standards Committee**

Dudley Metropolitan Borough Council

Members' Code of Conduct

1. Application of the Code

As a Member or Co-opted Member of Dudley Metropolitan Borough Council, I acknowledge that this Code of Conduct applies whenever I am acting in my capacity as a Member, including

- At formal meetings of the Council, the Cabinet, Committees, Sub-Committees and Working Groups.
- When acting as a representative of the Council.
- In taking any decisions as a Cabinet Member or Ward Councillor.
- In discharging functions as a Ward Councillor.
- At briefing meetings with Officers.
- At site visits.
- When corresponding with the Council other than in a private capacity.

2. General Principles

As a Member or Co-opted Member of Dudley Metropolitan Borough Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity, I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this Council.

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

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

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

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



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

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

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

### 3. **Standards of Conduct**

As a Member of Dudley Metropolitan Borough Council my conduct will address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the borough or the good governance of the Council in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member or Co-opted Member of this Council.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this Council's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other Members to account but restricting access to information when the wider public interest or the law requires it.
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this Council's policies, protocols and procedures, including on the use of the Council's resources.

- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside, and not bullying any person.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Council.
- Respecting the confidentiality of information received as a Member by:
  - not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and
  - not obstructing third parties' legal rights to access information.

#### 4. **Members' Interests**

The Localism Act 2011 provides for registration and disclosure of interests and in Dudley Metropolitan Borough Council this will be done as follows:

##### **Disclosable Pecuniary Interests**

Members must:

- Comply with the statutory requirement to register, disclose and withdraw from participating in respect of any matter in which they have a disclosable pecuniary interest.
- Ensure that the register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change(s) in respect of disclosable pecuniary interests.
- Make a verbal declaration of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.

“Meeting” means any meeting organised by or on behalf of the Council, including:

- Any meeting of the Council, the Cabinet or any Committee, Sub-Committee or Working Group.
- In taking a decision as an individual Ward Member or Cabinet Member.
- Any briefing with officers.
- Any site visit associated with any business of the Council.

## **Other Interests**

In addition to the requirements above, if Members attend a meeting at which any item of business is to be considered and you are aware that you have a “non-disclosable pecuniary interest or a non-pecuniary interest” in that item, you must make a verbal declaration of the existence and nature of the interest at or before the consideration of the item or as soon as the interest becomes apparent.

You have a “non-disclosable pecuniary interest or a non-pecuniary interest” in an item of business where:-

- A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax Payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area; or
- It relates to or is likely to affect any of the interests set out in the form attached to this Code, but in respect of a member of your family (other than a relevant person referred to on the form) or a person with whom you have a close association;

and that interest is not a disclosable pecuniary interest.

It is the responsibility of Members to disclose interests and to withdraw from participating in meetings as and when necessary in accordance with both the requirements of this Code and the Council’s Constitution.

## **Sensitive interests**

“Sensitive interests” mean those that contain information, the details of which if disclosed publicly, could lead to a Member or a person connected with a Member, being subjected to violence or intimidation.

Where a Member considers that the details of a disclosable pecuniary interest contains sensitive information, and the Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on the public version of the register, but may include a statement that an interest exists but the details are withheld.

## **Dispensations**

The Council may grant a dispensation, but only in limited circumstances, to enable a Member to participate and vote on a matter in which they have a disclosable pecuniary interest.

Members do not have disclosable pecuniary interests in any business of the Council where that business relates to functions of the Council in respect of-

- housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;

- 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 the school, unless it relates particularly to the school which the child attends;
- 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;
- an allowance, payment or indemnity given to Members;
- any ceremonial honour given to Members; and
- setting the Council Tax or a precept under the Local Government Finance Act 1992 as amended.

### **Gifts and Hospitality**

Members must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 that has been accepted from any person or body other than the Council. The Monitoring Officer will include the notification in the public register.

**LOCALISM ACT 2011 - Section 30(3)**

**The Relevant Authority (Disclosable Pecuniary Interests) Regulations 2012**

**REGISTER OF MEMBER'S DISCLOSABLE PECUNIARY AND OTHER INTERESTS**

NAME

A Member of

**PLEASE NOTE** that you are required to register the disclosable pecuniary interests of “relevant persons” which includes:

- (a) yourself as the Member or Co-opted Member;
- (b) the interests of the following persons in so far as you are aware of the existence of the interests of the other person(s):
  - your spouse or civil partner;
  - a person with whom you are living as husband and wife
  - a person with whom you are living as if you were civil partners

PLEASE STATE “NONE” WHERE APPROPRIATE

**DISCLOSABLE PECUNIARY INTERESTS**

- (a) Employment, office, trade, profession or vocation carried on for profit or gain

- (b) Sponsorship – any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out duties as a Member, or towards election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992

- (c) Contracts - Description of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council (a) under which goods or services are to be provided or works to be executed; and (b) which has not been fully discharged.

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- (d) Land - Any beneficial interest in land, which is within the area of the Council

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- (e) Licences - Any licence (alone or jointly with others) to occupy land in the area of the Council

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- (f) Any tenancy where (to my knowledge) (a) the landlord is the Council; and (b) the tenant is a body in which the relevant person has a beneficial interest

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- (g) Securities - Any beneficial interest in securities of a body where (a) that body (to my knowledge) has a place of business or land in the area of the Council; and (b) either
- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

**OTHER INTERESTS**

- (h) Gifts and Hospitality - Details of the interests of any person from whom a gift or hospitality has been received with an estimated value of at least £100.

- (i) I am a member or in a position of general control or management of the following body/ies one of whose principal purposes include the influence of public opinion or policy (including any Political Party or Trade Union)

Signed .....

Dated .....