

**REPORT OF STANDARDS COMMITTEE - LOCALISM ACT -- NEW PROVISIONS FOR CODES OF CONDUCT AND REGISTRATION AND DECLARATION OF MEMBERS' INTERESTS**

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**Summary:**

Reports the Standards Committee recommendations on implementation of the Localism Act provisions on Member Codes of Conduct and registration and declaration of interests, and associated matters.

**Recommendations:** Standards Committee recommends to Council that:

- (a) The draft Code of Conduct attached to the report be approved and adopted as the Copeland Borough Council Code of Conduct for Members, with effect from 1 July 2012;
- (b) the arrangements for assessment, review and determination of allegations of non-compliance with the Code of Conduct be approved as set out in Appendix "B" be approved, including appointment of 3 Independent Persons;
- (c) the arrangements and timetable for recruitment, appointment and remuneration of Independent Persons be approved as set out in paragraph 5.3;
- (d) the Audit Committee be re-styled the Audit and Governance Committee with amended terms of reference to include the matters referred to in para 6.2; and
- (e) subject to the necessary Commencement Order being made, the remaining arrangements described in this report relating to the conduct of members be brought into force on 1 July 2012, and that the Standards Committee as presently constituted ceases to exist on that date.

## **1. INTRODUCTION**

**1.1** The wide-ranging Localism Act 2011 (the 2011 Act) received Royal Assent on 15 November 2011.

**1.2** This report sets out proposals considered by Standards Committee on 30 May for a new Code of Conduct for the Members of Copeland Borough Council, changes to the terms of reference of the Audit Committee, and revised arrangements for dealing with allegations of breaches of the Code of Conduct, including arrangements for appointment of Independent Persons under the Act. It is expected that the relevant sections of the Act will be brought into force by a Commencement Order on 1 July 2012.

## **2. CODE OF CONDUCT**

**2.1** Every local authority has a duty under S 27 of the Localism Act to promote and maintain high standards of conduct by its members and co-opted members

**2.2** In discharging this duty, every local authority, including parish councils, will be required to adopt a code of conduct which must be in accordance with the Nolan Principles, which are:

Selflessness  
Integrity  
Objectivity  
Accountability  
Openness  
Honesty  
Leadership

**2.3** A parish council can comply with the duties set out in 2.1 and 2.2 above by adopting the code adopted by the principal authority for the area. In Copeland the principal authority is the Borough Council.

**2.4** Every local authority must include in its code of conduct provisions it considers appropriate for registration and disclosure of both pecuniary interests and interests other than pecuniary interests.

**2.5** A local authority can revise its existing code of conduct or adopt a new code as a replacement; and must publicise its adoption, revision or replacement of its code of conduct in such a way as to draw the attention of the code to people living in the area. The function of adoption, replacement or revision of a code can only be discharged by the authority itself, and cannot be delegated.

**2.6** Although the 2011 Act gives each authority discretion to decide what to include in its Code, there appears to be merit in attempting to achieve some consistency of content at least across authorities in the same geographical area. The Department of Communities and Local Government (CLG) has recently published a draft code template for use by local authorities. The Cumbria Monitoring Officer Network has done some work on the CLG draft, adding some additional clauses (following discussions with Standards Committee members in all principal authorities in Cumbria) about the personal conduct of Members (respect), and the Monitoring Officer Network has now produced a model code which they are able to recommend to all principal authorities in the County. This model Code, adapted as a draft Code of Conduct for Copeland Borough Council, is attached as Appendix "A", and is recommended to Council by Standards Committee for adoption.

### **3. INTERESTS**

**3.1** S 29 of the Act requires the Monitoring Officer to establish and maintain a register of members' interests. This requirement includes both the principal authority's register of members' interests and those of any parish councils in its area. The Monitoring Officer is required to make a copy of each such register available both "at a place in the authority's area", usually the main Council offices, and on its website. Where a parish council has its own website, the principal authority is required to make data available to enable the parish council's register to be published on its website.

**3.2** The current categories of interests (personal and prejudicial) will be replaced by three new categories:

- (i) Disclosable Pecuniary Interests (DPI's) which will have to be registered, and declared in meetings if not already registered. Members with DPI's will not be able to participate in discussions on items of business in which they have DPI's. DPI's will be defined in Regulations that have not yet been published in final format but are expected to include the following categories of interests:

- Employment of a Member
- Contracts between a Member and the authority
- Sponsorship of a Member, including election sponsorship and trade union sponsorship
- Any beneficial interest of a Member in land in the area
- Any licences or tenancies of the Member where the authority is the landowner
- Shares held by a member in a body with a place of business or land in the area exceeding £25,000 of the total

issued share capital, or one hundredth of the total issued share capital

- (ii) Other pecuniary interests as set out in each authority's Code of Conduct. These will have to be registered but not declared in meetings.
- (iii) Non pecuniary interests as set out in each authority's Code of Conduct. These will have to be registered but not declared in meetings.

**3.3** Clearly it will necessary for Members to be very clear about their obligations as to the registration and declaration of disclosable pecuniary interests, and training will be given once the final Regulations have been received.

#### **4. ALLEGATIONS OF BREACHES OF THE CODE**

**4.1** The statutory framework for local determination of complaints involving initial consideration of a complaint by an Assessment Sub Committee of the Standards Committee has been repealed.

**4.2** There is a requirement under the new Act for each local authority (other than parish councils) to have in place arrangements under which allegations of breaches of the authority's code of conduct can be investigated, and arrangements under which decisions on allegations can be made. These arrangements must include at least one "independent person" appointed for the purpose by the Council, to assist in making decisions on breaches of the Code of Conduct and any action resulting if a breach is proven. An independent person can also be consulted by a member of the authority or of a parish council in the area if that member is the subject of a complaint of a breach of the code of conduct. The consensus view in informal discussions earlier in the year was that there should be 3 independent persons appointed by the Council.

**4.3** Following the informal discussions, a draft procedure for processing of complaints against Councillors has been prepared and is attached as Appendix "B".

#### **5. APPOINTMENT OF INDEPENDENT PERSONS**

**5.1** The Localism Act provides that "independent persons" referred to in 5.2 above cannot have been members or co-opted members of the authority concerned for the last 5 years, meaning that the current independent and parish members of Standards Committee are ineligible.

**5.2** However the Government has recently indicated that, in view of the representations received about the potential loss of experienced people if existing independent members are not eligible for appointment, there will be transitional provisions to allow an authority to appoint people who have previously been an independent member of a Standards Committee as independent persons, provided they

resign as independent members first. These transitional arrangements would continue for one year, but with a discretion for authorities to re-appoint independent persons so appointed for further periods. It is expected that these transitional arrangements will be part of the Commencement Order which will bring into force on 1 July 2012 the relevant sections of the Localism Act relating to standards and the conduct of members.

**5.3** It is therefore proposed to place an advertisement on the Council website in early June (press advertisement is not required) inviting applications from people interested in the positions, with a closing date of 22 June, which will enable appointments to be made in late June or early July. It is intended that the recruitment process should be:

- Shortlisting to be by Chief Executive and Monitoring Officer in consultation with Leader and Leader of the Opposition
- Interviewing of applicants who have not previously served as independent members of the Standards Committee by Chief Executive and Monitoring Officer
- Term of office to coincide with those of Councillors but with mechanism for early termination
- Token remuneration (£100 pa is suggested – as per Independent Members of Standards Committee) with reimbursement of travel expenses

## **6. GOVERNANCE**

**6.1** In informal discussions with Members it has been made clear that there is no wish for appointment of a politically balanced standards committee under the Local Government Act 1972 (i.e. without independent or parish voting members) to oversee the Code of Conduct under the new arrangements. For that reason the proposed arrangements for dealing with allegations of breaches of the Code will involve only the Independent Persons and the statutory officers, with the exception of appeals against initial decisions to take no action on allegations of breaches, which it is proposed would involve the independent Chair of Audit Committee plus one other Member.

**6.2** However it is suggested that it is essential that there is a link between the arrangements described in this report and the Council's governance framework, for the purposes of keeping the Code of Conduct and the associated protocols under review, monitoring the performance of Assessment and Review Panels and the independent persons, receiving quarterly or bi-annual statistical reports on cases processed, and making reports to Council on these matters where necessary, including at least one annual report.

**6.3** It is recommended that this would be an appropriate role for the Audit Committee, which already has responsibility for a number of governance functions. It is

suggested that the Committee should be re-styled the Audit and Governance Committee, with revised terms of reference to include the following:

- To monitor and review the Council's Code of Conduct for Members and the arrangements for determining allegations of breaches, making recommendations to Council when necessary.
- To receive bi-annual statistical reports from the Monitoring Officer on allegations received and processed.
- To agree a Scheme for Dispensations under Section 33 of the Localism Act, and to determine any applications for dispensations.

## **7. TIMESCALES**

7.1 At the time of writing the relevant Commencement Order bringing into force the relevant provisions of the Act, and the Regulations on interests, had not been made. It is understood it is the intention of Government that this will be done in time for the provisions described in this report to be operational from 1 July 2012.

## **8. STATUTORY OFFICER COMMENTS**

- 8.1 The Monitoring Officer's comments are: Contained within the report
- 8.2 The Section 151 Officer's comments are: The expenditure on the new remuneration package is contained within existing budgets.
- 8.3 EIA Comments: There will be no advantageous or disadvantageous implications for any group in the community arising from the proposals in this report.
- 8.4 Other consultee comments, if any: None

List of Appendices – Appendix "A" – Draft Code  
Appendix "B" – Draft Procedure for Processing Allegations

List of Background Documents: None

## CODE OF CONDUCT

### FOR MEMBERS AND CO-OPTED MEMBERS OF THE AUTHORITY

1. The Copeland Borough Council ("The Authority") has adopted the following code dealing with the conduct that is expected of members and co-opted members of the Authority ("Members") when they are acting in that capacity as required by section 27 of the Localism Act 2011 ("the Act").
2. The Authority has a statutory duty under the Act to promote and maintain high standards of conduct by Members and the Code sets out the standards that the Authority expects Members to observe.
3. The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. It is the responsibility of individual Members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the Authority. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years.
4. The code is intended to be consistent with the seven principles as attached to this code and applies whenever a person is acting in his/her capacity as a Member of the Authority or co-opted member in the conduct of the Authority's business or acting as a representative of the Authority.
5. When acting in your capacity as a Member
  - (1) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend, a close associate, an employer or a business carried on by you.
  - (2) You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.
  - (3) You must not disclose any information given to you as a Member in breach of any confidence.
  - (4) You must not bring your office or your Authority into disrepute.
  - (5) You must treat others with respect and promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority's statutory officers and its other employees.
  - (6) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.

- (7) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- (8) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- (9) You must declare any private interests, both disclosable pecuniary interests and any other registrable interests, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner which conforms with the procedures set out below.
- (10) You must ensure, when using or authorising the use by others of the resources of your authority, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (11) You must promote and support high standards of conduct when serving in your office.

#### **Registering and declaring disclosable pecuniary and other registrable interests**

- (1) You must, within 28 days of taking office as a member or co-opted member, notify your authority'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.
- (2) In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.
- (3) If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest' as described by the Localism Act 2011.
- (4) Following any disclosure of an interest not on the authority'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.
- (5) 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. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

## **SEVEN GENERAL PRINCIPLES OF CONDUCT**

### **Selflessness**

1. 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**

2. 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**

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

### **Accountability**

4. 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**

5. Holders of public office should be as open as possible about 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**

6. 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**

7. Holders of public office should promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence.

## Copeland Borough Council

### Procedure for Initial Assessment of Allegations of Breaches of the Code of Conduct

#### Introduction

1 This procedure applies when a complaint is received that a Borough Councillor, co-opted Member or Parish Councillor has or may have failed to comply with the relevant Code of Conduct.

2 The person making the complaint will be referred to as the complainant and the person against whom the complaint has been made will be referred to as the subject member.

3 No Member, Independent Person, or officer will participate in any stage of the assessment process if they have any personal conflict of interest in the matter, including any earlier stages of the assessment or processing of a complaint.

#### Assessment Hearing

4 Upon receipt of a complaint that a Borough Councillor, Co-opted Member or Parish Councillor has or may have failed to comply with the Code of Conduct, the relevant Democratic Services Officer will convene as soon as possible and in any event within 20 working days a meeting of an Assessment Panel. The subject Member will be informed that a complaint has been received and the nature of the complaint and the identity of the complainant, unless the complainant has requested confidentiality, in which case the complainant's identity will not be revealed to the subject member until the Assessment Hearing has considered the matter (see below).

5 The Assessment Panel will comprise the Chief Executive and the Monitoring Officer in consultation with at least one Independent Person. The Panel will receive in advance of the meeting a copy of the complaint, together with a report prepared by the Monitoring Officer or his representative which will set out the following details:

- Whether the complaint is within the jurisdiction of the Council – i.e. whether the subject member was subject to a relevant code of conduct at the time of the allegation
- The paragraphs of the Code of Conduct the complaint might refer to, or the paragraphs the complainant has identified
- A summary of key aspects of the complaint if it is lengthy or complex
- Any further information that the officer has obtained to assist the Assessment Panel with its decision. This may include minutes of meetings, a copy of a member's entry in the register of interests, information from Companies House or the Land Registry, or other easily obtainable documents

## The Assessment Process

6 The Assessment Panel will first consider whether the complaint meets the following tests:

- The complaint is against one or more named members of the Borough Council or a parish council within Copeland Borough;
- The subject member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code under which the subject member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests, then the decision of the Assessment Panel must be that no further action will be taken.

7 If the complaint meets the above tests, then the Assessment Panel will proceed to consider which of the following courses of action is appropriate, having regard to all relevant circumstances:

(i) That there has been no breach of the Code and no action is necessary

(ii) That there is a prima facie case to answer involving a DPI and that the matter should be referred to the police for investigation.

(iii) That there is a prima facie case to answer involving an interest other than a DPI, and that the matter should be referred for investigation by an independent investigating officer appointed by the Monitoring Officer.

(iv) That there appears to have been a technical breach of an interest other than a DPI, but that a full investigation cannot be justified and that an informal resolution to the complaint involving mediation, arbitration, training, or other means, should be sought, to the mutual satisfaction of both parties.

8 The Assessment Panel will, unless there are exceptional circumstances, reach a decision within 20 working days of receipt of the complaint.

9 If the Assessment Panel decides to take no action over a complaint, then it will arrange for notice of that decision, including the reasons for it, to be given to the complainant, the subject member, and, if the subject member is a parish councillor, to the clerk to the relevant parish council. This will be done within 5 working days after the date of the meeting.

10 If the Assessment Panel decides to refer the complaint to the Monitoring Officer, it will arrange for a summary of the complaint to be sent to the complainant and the subject member stating what the allegation is, and the type of referral that has been made. This will be done within 5 working days after the date of the meeting.

11 However, the Assessment Panel may decide not to give the subject member a summary of the complaint if it considers that doing so would be against the public interest or would prejudice any future investigation. In considering this, the Panel will consider in particular whether it is likely that the subject member may intimidate the complainant or any witnesses involved or whether early disclosure of the complaint may lead to evidence being compromised or destroyed. The Panel will balance whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

12 Where an allegation is referred for investigation by an independent investigating officer, a report on the investigation should be submitted to the Monitoring Officer within 2 months of the date of referral, or failing that a progress report with a projected completion date should be provided within 2 months.

13 Where a report of an independent investigating officer is made with a finding that there has been a breach of the Code, a hearing will be conducted by the Chief Executive and the Monitoring Officer, in consultation with at least two independent persons, within 20 working days of the date of receipt of the report.

#### **The Review Process**

14 If the Assessment Panel decides not to take any action on a complaint, then the Complainant has a right to request a review of that decision, and will be so advised when notified of the decision.

15 When a request for review is received, the relevant Democratic Services Officer will convene as soon as possible and in any event within 20 working days a meeting of a Review Panel.

16 The Review Panel will comprise an Independent Person who has had no previous involvement in the complaint, either in a consultative capacity to the Council or in an advisory capacity to the subject Member; the independent Chair of the Audit and Governance Committee; and a Member of the Audit and Governance Committee, to be nominated by the Chair. The Review Panel will be advised by the Deputy Monitoring Officer or a senior officer nominated by him/her.

1. In addition to the documents referred to in paragraph 9 above, the Review Panel will have a copy of the Assessment Panel's decision notice, but will consider the complaint afresh. The Review Panel has the same decisions available to it as the Assessment Panel and will follow the procedure outlined above in paragraphs 6-13.
2. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Panel will consider if it is more appropriate to pass this to an Assessment Panel as a new complaint. In this instance, the Review Panel will make a formal decision that the review request will not be granted.

3. Where on a request for review further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Review Panel will consider if it is more appropriate to pass this to an Assessment Panel as a new complaint. In this instance, the Review Panel will make a formal decision that the review request will not be granted.

### Withdrawing Complaints

17 If a complainant asks to withdraw the complaint prior to the Assessment Panel having made a decision on it, the Assessment Panel will decide whether or not to grant the request. In making its decision, the Panel will consider:

- Whether the public interest in taking some action on the complaint outweighs the Complainant's wish to withdraw it
- Whether the complaint is such that action can be taken on it without the complainant's participation
- Whether there is an identifiable underlying reason for the request to withdraw the complaint, and in particular whether there is any evidence that the Complainant may have been pressured by the subject member or other person to withdraw the complaint

### Confidentiality

18 If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Panel at the same time as it considers the complaint.

19 As a matter of fairness and natural justice, the subject member should usually be told who has complained about them. However, in exceptional circumstances, the Assessment Panel may grant confidentiality if it is satisfied that the Complainant has reasonable grounds for believing that they will be at risk of physical harm, or their employment will be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

20 The Assessment Panel will also take into account whether it would be possible to refer the complaint without making the Complainant's identity known, and in particular whether the Complainant's participation would be required if the complaint were referred.

21 If the Assessment Panel decides to refuse a request from a Complainant for confidentiality, it may offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. The Assessment Panel will balance whether the public interest in taking action on a complaint may outweigh the complainant's wish to have their identity withheld from the subject member