

Council Report



Listening Learning Leading

Report of Monitoring Officer

Author: Kathy Fiander

Tel: 01491 823649

E-mail: kathy.fiander@southandvale.gov.uk

To: Council

DATE: 19 July 2012

AGENDA ITEM NO 6

Localism Act: standards of conduct

Recommendations

That Council

1. endorses the decision of Council on 17 May 2012 to adopt the code of conduct as the code of conduct which is expected of councillors and co-opted members of South Oxfordshire District Council with effect from 1 July 2012 in place of the council's existing code of conduct, and now subject to the inclusion of the definition of disclosable pecuniary interests as set out in the full code of conduct attached at appendix 1;
2. designates the monitoring officer as the proper officer for receipt of requests for dispensations under section 33 of the Localism Act 2011;
3. amends the terms of reference of the Audit and Corporate Governance Committee to include the power to grant dispensations to councillors under section 33 of the Localism Act 2011;
4. subject to the above, authorises the Head of Legal and Democratic Services to include the code of conduct in the constitution and to make any consequential amendments to the constitution arising from the adoption of the code including minor or consequential amendments required for clarification, consistency and compliance with the council's style guide;
5. considers the recommendations put forward by the interview panel and appoints two independent persons for a period to be advised by the monitoring officer at the council meeting.

Purpose of Report

1. This report provides an update on the impact of the secondary legislation on some of the council decisions on the new standards arrangements, which were taken at the Council meeting on 17 May 2012.

Strategic Objectives

2. High standards of conduct underpin all the council's work and the achievement of all its strategic objectives.

Background

6. In May 2012 Council agreed to adopt a revised code of conduct with effect from 1 July 2012 or such later date that was specified in secondary legislation that was awaited at the time. Council also agreed the appointment of independent persons to act as consultees to the monitoring officer on code of conduct complaints.
7. At the time officers had had sight of the Localism Act 2011 (the Act), which set out the requirements for the new standards framework. Council was asked to take decisions in May so that the council would be compliant with the Act as officers understood the requirements at the time. Officers included a caveat in the report that secondary legislation would confirm the date at which the new framework would come into effect and would also clarify some of the unknown aspects of the Act. Officers anticipated that the implementation date would be 1 July but many believed that that could not be the date given the lateness of the legislation and the enormity of the work to be undertaken to meet that deadline. On 8 June secondary legislation became available that confirmed that the effective date would be 1 July. It also raised questions about some of the decisions taken so far to implement the new framework. This report therefore revisits the arrangements that have been called into question by the secondary legislation.

CODE OF CONDUCT

8. In May, Council adopted a code of conduct and agreed that the monitoring officer should insert into the code the wording on disclosable pecuniary interests when it became available from the secondary legislation. Rather than being able to do that the wording of the secondary legislation is such that officers now question the validity of any decisions taken before the Commencement Order came into force on 7 June and Council is therefore asked to endorse its decision to adopt the code of conduct and on this occasion to include the wording on disclosable pecuniary interests set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 made on 6 June and laid before Parliament on 8 June. The full version of the code of conduct is at appendix 1.

INDEPENDENT PERSONS AND DEALING WITH MISCONDUCT COMPLAINTS

9. In May the report to Council explained that the Localism Act created a new category of independent person who the monitoring officer must consult at various stages of the process when dealing with allegations of misconduct by councillors. Although the Act prevents existing co-opted independent members from serving as IPs for the next five years we understood that, because of the difficulties faced by councils in recruiting independent persons, regulations would allow the existing independent representatives to become independent persons for a transitional

period although we were aware that the terms would be set out in the awaited regulations. So that independent persons were in post at 1 July, we asked Council to agree to appoint the two former independent representatives on the former Standards Committee, Mrs Carole Burchett and Mr David Lockie, for a term consistent with the term specified in the regulations.

10. Unexpectedly the regulations do not support the Council having made these appointments but instead clarify that, whilst appointment of former independent representatives is permissible, such appointments must be by application after advertisement of the posts.
11. We have therefore advertised the posts. The closing date for applications was Friday 6 July and interviews will take place on Monday 16 July. Councillors Dorothy Brown and Margaret Davies will interview the applicants with the monitoring officer and a recommendation on who Council should appoint will be made at the Council meeting on 19 July. The Department for Communities and Local Government made a further Order on 2 July to restrict the term of appointment of anyone who was a former member of the standards committee. Depending on who is recommended the monitoring officer will advise Council on the terms of office, which comply with the legislation.

DISPENSATIONS

12. The Localism Act specifies that a councillor or co-opted member may apply to the proper officer to request a dispensation when they would not be able to either participate (or participate further) in any discussion of a matter at a meeting, or participate in any vote, or further vote, taken on a matter at a meeting.
13. The Act states that a dispensation may be granted in circumstances where:
 - so many councillors have a disclosable pecuniary interest (DPI) and are thus prohibited from participating that it would impede the transaction of the business without a dispensation; or
 - the representation of different political groups on the body would be so upset as to alter the likely outcome of any vote on the matter without a dispensation; or
 - granting of a dispensation would be in the interest of the inhabitants of the authority's area; or
 - every member of the Cabinet would be prevented from participating in Cabinet business because of a DPI if no dispensation was granted; or
 - it is otherwise appropriate to grant the dispensation.
14. Whereas the Local Government Act 2000 required a Standards Committee to consider and grant a dispensation, the Localism Act permits the delegation of this responsibility.
15. Council is asked to designate the monitoring officer as the proper officer for receipt of requests for dispensations. The terms of reference of the Audit and Corporate Governance Committee need to be amended to include power to grant dispensations to councillors under section 33 of the Localism Act 2011. This power relates only to district councillors as parish councils now have powers to

determine their own applications for dispensations. In due course the committee will receive a report asking it to consider the circumstances in which that power could be delegated to the monitoring officer.

Financial Implications

16. The cost of implementing the arrangements and providing training will be met from existing budgets.

Legal Implications

17. The legal implications are set out in the body of the report.

Human Resource Implications

18. Adoption of the revised code and provision of advice on it will be carried out within existing resources. Officers will provide training.

Conclusion

19. I recommend Council endorses the decision of Council on 17 May 2012 to adopt the code of conduct as the code of conduct which is expected of councillors and co-opted members of South Oxfordshire District Council with effect from 1 July 2012 in place of the council's existing code of conduct, and now subject to the inclusion of the definition of disclosable pecuniary interests as set out in the full code of conduct attached at appendix 1 and authorise me to include the code of conduct in the constitution. I also recommend Council appoints me as the proper officer for receipt of requests to grant a dispensation, expands the terms of reference of the Audit and Corporate Governance Committee to include power to grant dispensations and appoints two independent persons to act as consultees on code of conduct complaints.

Background papers

- Council report, 17 May 2012
- Localism Act 2011, chapter 7
- The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012
- The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) (Amendment) Order 2012

Code of conduct

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, as follows:

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other

Subject	Prescribed description
	<p>than from the council) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(3).</p>
Contracts	<p>Any contract which is made between the people referred to in paragraph 16 (or a body in which the relevant person has a beneficial interest) and the council -</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the area of the council.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to your knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body in which you or those referred to in paragraph 16 have a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to your knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either -</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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 you or those referred to in paragraph 16 has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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.

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.

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.