

## **BRECKLAND COUNCIL**

**Report of: Mark Stokes, Deputy Chief Executive**

**To: COUNCIL – 24 MAY 2012**

**(Author: Vicky Thomson, Assistant Director - Democratic Services)**

**Subject: The Localism Act – The Amended Standards Regime**

**Purpose: To agree arrangements for Standards as required by the Localism Act 2011**

### **Recommendations:**

It is recommended to Council that:

- a) Members give consideration to the recommendations outlined in the report for full Council approval; and
- b) Council instruct the Monitoring Officer, in liaison with the Leader of the Council, to draft any changes to the report that are necessary, arising from the publication of the Regulations or any further guidance and to report back to full Council for approval where necessary.

*A list of the recommendations in this report can be found in Appendix 3*

## **1. Introduction**

### **1.1 The Localism Act 2011**

The Localism Act 2011 (Part 1, Chapter 7) makes fundamental changes to the system of regulation of standards of conduct for elected and Co-opted Councillors. The date for implementation of these changes is 1 July 2012, but need to be fully approved by full Council before then.

Following a report of the Standards Committee to Cabinet of 27 March 2012, the Monitoring Officer was asked to produce a report for this meeting suggesting alternative options. This report describes the changes and recommends the actions required for the Council to implement the new regime as a result of the Localism Act 2012.

## **2. The Localism Act 2011 and Standards**

### **2.1 Duty to promote and maintain high standards of conduct**

The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and Co-opted Members.

### **2.2 Standards Committee**

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with

standards issues and case-work, so merit remains in having a Standards / Hearing Panel in some cases. The Standards / Hearing Panel would be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result:

- 2.2.1 The composition of the Panel will be governed by political balance, unless Council decides otherwise. The present restriction to only one Member of the Executive on the Standards Committee will cease to apply;
- 2.2.2 The current Co-opted Independent Members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages. The Act provides that the existing Co-opted Independent Members cannot apply to serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Panel, but will not be Co-opted onto the Panel;
- 2.2.3 The District Council will continue to have responsibility for dealing with standards complaints against elected and Co-opted Members of Town / Parish Councils, although the current Town / Parish Council representatives will also cease to hold office. The District Council can choose whether it wants to continue to involve Town / Parish Council representatives and, if so, how many.

**Issue 1 – The District Council must decide if it is to set up a Standards /Hearing Panel, and if so, how it is to be composed.**

#### **Recommendation 1**

- a. **That the Council delegates to the Audit Committee, the role of monitoring Standards issues.**
- b. **That training is provided for the Members of the Audit Committee in order to support them in carrying out this additional role.**
- c. **That when required by the Monitoring Officer, a Hearing Panel comprising 3 elected Members of the Audit Committee, will be called to sit for cases referred to it by the Monitoring Officer.**
- d. **That the current Standards Committee be dissolved with effect from 30 June 2012 if there are no outstanding cases, or until such at a later date as outstanding cases are resolved.**

### **3. The Code of Conduct**

3.1 The current ten General Principles and Model Code of Conduct will be repealed, and Members will no longer have to give an undertaking to comply with the current Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and Co-opted Member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles:-

- Selflessness
- Integrity
- Objectivity

- Accountability
- Openness
- Honesty
- Leadership

- 3.2 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority’s Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. Confirmation on definition is anticipated soon and will be incorporated into the proposed Code when available.
- 3.3 The Act prohibits Members with a DPI from participating in authority business, and the Council can, if it wishes, adopt a Standing Order requiring Members to withdraw from the meeting room.
- 3.4 The Council has to decide what to include in its Code of Conduct. There are clear benefits to aligning any Code that is adopted by the Council to that adopted at County / National level, as this reduces the impact on Members who sit in County Council or the Police Authority. There is also benefit in encouraging Town / Parish Council’s to align with that adopted by the District Authority as it will also provide consistency for those Town / Parish Members who also sit as District level with an additional benefit of minimising complications in arrangements for investigations and training or advice to Town / Parish Councils etc.
- 3.5 A model Code of Conduct has recently been issued by the Local Government Association (LGA) and the Department for Communities and Local Government (DCLG) have also published illustrative text for a Code of Conduct. A recommended Code of Conduct has been drafted based on that issued by the LGA (Appendix 1) and a copy of the illustrative text published by the DCLG is included for information (Appendix 2)

**Issue 2 – The Council has to decide what it will include in its Code of Conduct.**

**Recommendation 2**

- a. **That the Code of Conduct attached in Appendix 1, be adopted by Council.**
- b. **That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer be instructed, after consultation with the Leader of the Council, to add to the Code of Conduct, provisions which are considered to be appropriate for the registration and disclosure of interests other than DPIs and to bring back to Council for approval.**

**4. Dealing with Complaints against Councillors under the Code of Conduct**

4.1 “Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Town / Parish Council Members, and such complaints can only be dealt with in accordance with such “arrangements”. Therefore, the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

The advantage is that the Act repeals the requirements for a separate Committee for referrals (known as the Assessment Sub Committee at Breckland Council), Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Committee or Panel and to the Monitoring Officer.

#### 4.2 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Audit Committee / Hearing Panel where the Monitoring Officer feels that it would be inappropriate for him/her to take a decision on it, for example where Independent Person or the Monitoring Officer has previously advised the Member on the matter or the complaint is particularly sensitive.

These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that the Monitoring Officer should be accountable for its discharge. For this purpose, it would be appropriate that the Monitoring Officer make an annual report to the Audit Committee, which would enable the Monitoring Officer to report on the number and nature of complaints received and draw to the Committee’s attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs. The minutes of the Audit Committee would continue to be reported to full Council as they are now.

#### 4.3 “No Breach of Code” finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to an Assessment Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to a Hearing Panel if the Monitoring Officer feels it is appropriate. The Independent Person will be consulted and all investigation reports will be provided to enable him / her to get an overview of current issues and pressures. In the case of Town / Parish Councils, the findings will be referred back to them to decide.

#### 4.4 “Breach of Code” finding on investigation

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

Where the formal investigation finds evidence of a failure to comply with the Code of Conduct, and the Monitoring Officer, in consultation with the Independent Person, believes it to be appropriate, it would be necessary for the Hearing Panel (in practice a Sub-Committee of Audit Committee) to hold a Hearing at which the Member against whom the complaint has been made can respond to the investigation report, and the Hearing Panel can determine whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

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

The Act does not give the Council any powers to impose sanctions such as suspension or requirements for training or an apology from Members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the Member concerned. In practice, this might include the following –

- 4.5.1 Formal censure of the Member.
- 4.5.2 Reporting its findings to Council [*or to the Town / Parish Council*] for information (not optional).
- 4.5.3 Recommending to the Member’s Group Leader (or in the case of non-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
- 4.5.4 Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- 4.5.5 Instructing the Monitoring Officer to [*or recommend that the Town / Parish Council*] arrange training for the Member.
- 4.5.6 Removing the Member [*or recommend to the Town / Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Town / Parish Council*].
- 4.5.7 Withdrawing [*or recommend to the Town / Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or

- 4.5.8 Excluding *[or recommend that the Town / Parish Council exclude]* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

There is a particular difficulty in respect of Town / Parish Councils, as the Localism Act gives the Council no power to do any more in respect of a Member of a Town / Parish Council than make a recommendation to the Town / Parish Council on action to be taken in respect of the Member. Town / Parish Councils will be under no obligation to accept any such recommendation. The only way to achieve this would be to constitute the Standards Panel and Hearings Panels as a Joint Panel and Joint Sub-Panel with the Town / Parish Councils, and seek the delegation of powers from Town / Parish Council to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Town / Parish Council.

#### 4.6 Appeals

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

**Issue 3 – The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct.**

#### **Recommendation 3**

- a. **That the Monitoring Officer be instructed to draft the arrangements documents based on the outcome of this meeting, for consideration by Council at its meeting on 5 July 2012.**
- b. **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct.**
- c. **That the Monitoring Officer be given delegated power, after consultation with the Independent Person(s), to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that the Monitoring Officer be given discretion to refer decisions on investigation to the Hearing Panel of the Audit Committee, where the Monitoring Officer feels that it is inappropriate for him/her to take the decision, and to report annually to the Audit Committee on the discharge of this function.**
- d. **Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer after consultation with the Independent Person, be given the powers to close the matter, providing a copy of the report and findings of the investigation to the complainant, the Member concerned, the Independent Person and where appropriate to the Town / Parish Council, and report the findings to the Audit Committee for information.**

- e. **Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person(s) be authorised to seek local resolution in appropriate cases. Where such local resolution is not appropriate or not possible, the Monitoring Officer is to report the investigation findings to a Hearings Panel of the Audit Committee for local Hearing;**
  
- f. **That Council delegate powers to the Audit Committee and any sub-group (comprising of a minimum of 3 Members of the proposed Audit Committee with political balance) in respect of a Member who is found on investigation to have failed to comply with the Code of Conduct, such actions to include –**
  - (i) **Formal censure of the Member.**
  - (ii) **Reporting its findings to Council [*or to the Town / Parish Council*] for information (not optional).**
  - (iii) **Recommending to the Member’s Group Leader (or in the case of non-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council.**
  - (iv) **Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;**
  - (v) **Instructing the Monitoring Officer to [*or recommend that the Town / Parish Council*] arrange training for the Member.**
  - (vi) **Removing [*or recommend to the Town / Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Town / Parish Council*].**
  - (vii) **Withdrawing [*or recommend to the Town / Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or**
  - (viii) **Excluding [*or recommend that the Town / Parish Council exclude*] the Member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**
  
- g. **That, as soon as is practicable, in liaison with other District Authorities and the Norfolk Association of Local Councils, to engage with all elected District and Town / Parish Members, to advise on the new arrangements and how the Standards regime will operate.**

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

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

## 5.1 “Independence”

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

The Act states that a person is considered not to be “Independent” if –

- 5.1.1 the Independent Person is, or has been within the last 5 years, an elected or Co-opted Member or an officer of the District Council or of any of the Town / Parish Councils within its area;
- 5.1.2 the Independent Person is, or has been within the last 5 years, an elected or Co-opted Member of any Committee or Sub-Committee of the District Council or of any of the Town / Parish Councils within its area (which would preclude any of the current Co-opted Independent Members of Standards Committee from being appointed as an Independent Person(s);  
or
- 5.1.3 he is a relative or close friend of a current elected or Co-opted Member or officer of the District Council or any Town / Parish Council within its area, or of any elected or Co-opted Member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

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

## 5.2 Functions of the Independent Person

The functions of the Independent Person are –

- They must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and

- They may be consulted by a Member or Co-opted Member of the District Council or of a Town / Parish Council against whom a complaint has been made.

5.3 The Act gives discretion to appoint one or more Independent Persons. This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

As it is being recommended to Council that one Independent Person is appointed, arrangements are being considered to agree options with other Local Authorities to utilise their Independent Persons should the need arise.

#### 5.4 Remuneration

As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the Scheme of Members' Allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chairman of Standards Committee, the role of Independent Person is intended to be less onerous. He/she is likely to be invited to attend all meetings of the Hearing Panel and any relevant meetings of the Audit Committee, but not to be a formal Member (he/she could be Co-opted as a non-voting Member but cannot Chair as the Chairman must exercise a second or casting vote).

He/she will need to be available to be consulted by Members against whom a complaint has been made, although it is unclear what assistance he/she could offer.

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

Although no longer a requirement, the Independent Remuneration Panel (IRP) has been asked to consider and recommend the level of allowances made payable to the Independent Person. The IRP recommended that an allowance of £42 per meeting plus travel and expenses is provided to the Independent Person and that this figure is reviewed in time for Annual Council 2013.

#### 5.5 Appointment of the Independent Person

The recruitment process to appoint an Independent Person has been completed by the Monitoring Officer and the Staff Appointments Panel. The appointment of the IP is to be made by a positive majority of Council at this meeting. Due to the time restraints of the recruitment process, a recommendation will be tabled at this meeting.

## **Issue 4 – Independent Persons**

### **Recommendation 4**

- a. That Council agree to appoint one Independent Person**
- b. That the recommendation of the Independent Remuneration Panel regarding the allowance to be made payable to the Independent Person be approved at a rate of £42 per meeting plus travel and expenses.**
- c. That the appointment of the Independent Person is approved by a positive majority of the Council at this meeting. In the case of Breckland Council, this will require a positive vote from a minimum of 28 Members of the Council regardless of the number of Members present at the meeting, Details of the recommended applicant to be confirmed at this meeting.**
- d. That the appointment of the Independent Person is initially for the period of 1 July 2012 to the date of the Annual Council meeting in May 2013.**
- e. That the Monitoring Officer is authorised to make arrangements with other Local Authorities to utilise their Independent Person should the need arise and to then seek approval from full Council.**

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

### **6.1 The register of Members' interests**

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

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

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

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

## 6.2 Registration on election or co-option

Each elected or Co-opted Member must register all DPIs within 28 days of becoming a Member. Failure to register is made a criminal offence, but would not prevent the Member from acting as a Member.

In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

There is no continuing requirement for a Member to keep the register up to date, except on re-election or re-appointment, but it is likely that Members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

The preparation and operation of the register, not just for this authority but also for each Town / Parish Council, is likely to be a considerable administrative task, especially where different Town / Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Town / Parish Councils.

### **Issue 5 – Preparation of the Registers**

#### **Recommendation 5**

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

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

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences.

- 7.1 The duty to disclose and potentially withdraw arises whenever a Member attends any meeting of Council, a Committee or Sub-Committee, or of Cabinet or a Cabinet Sub-Committee, and is aware that he/she has a DPI in any matter

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

- 7.2 Where these conditions are met, the Member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, Members of the public attending the meeting will in future need to read the register of Members’ interests, as registered interests will no longer need to be disclosed at the meeting.
- 7.3 Where the Member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 7.4 If a Member has a DPI in any matter, he/she must not –
  - 7.4.1 Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
  - 7.4.2 Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 7.5 Failure to comply with the requirements (paragraphs 7.2, 7.3 or 7.4) becomes a criminal offence, rather than leading to sanctions.
- 7.6 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs; failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence.

#### **Issue 6 – What Standing Order should the Council adopt in respect of withdrawal from meetings for interests?**

##### **Recommendation 6**

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

- 8. Disclosure and Withdrawal in respect of matters to be determined by a Single Member**
  - 8.1 Matters can be decided by a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers, or where the Member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors.

- 8.2 The Act provides that, when a Member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter –
- 8.2.1 Unless the DPI is already entered in the register of Members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
- 8.2.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 8.3 Standing Orders can then provide for the exclusion of the Member from any meeting while any discussion or vote takes place on the matter.
- 8.4 Note that the Act here effectively removes the rights of a Member with a prejudicial interest to make representations as a Member of the public under Paragraph 12(2) of the current Code of Conduct.

**Issue 7 – In what circumstances should Standing Orders exclude a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers, or where the Member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors, from attending meetings while the matter in which they have a DPI is being discussed or voted upon?**

#### **Recommendation 7**

**The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a Member, when acting as a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers, or where the Member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors, must withdraw from dealing with the entire matter in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.**

#### **9. Sensitive Interests**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

Where a Member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of Members' interests would lead to the Member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of Members' interests.

## 10. Dispensations

10.1 The provisions on dispensations are significantly changed by the Localism Act.

10.2 At present, a Member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –

10.2.1 That at least half of the Members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many Members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and

10.2.2 That so many Members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the Members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

10.3 In future, a dispensation will be able to be granted in the following circumstances –

10.3.1 That so many Members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result.

10.3.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate.

10.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area.

10.3.4 That, without a dispensation, no Member of the Cabinet would be able to participate on this matter; or

10.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.

10.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

10.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to a Committee or Sub Committee, or to the Monitoring Officer. Grounds 10.3.1 and 10.3.4 are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Hearing Panel, thus enabling dispensations to be granted “at the door of the meeting”. Grounds 10.3.2, 10.3.3 and 10.3.5 are rather more objective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with the Hearing Panel, after consultation with the Independent Person.

## **Issue 8 – What arrangements would be appropriate for granting dispensations?**

### **Recommendation 8**

**That Council delegate the power to grant dispensations –**

- a. on Grounds set out in Paragraphs 10.3.1 and 10.3.4 of this report to the Monitoring Officer with an appeal to the Hearing Panel, and**
- b. on Grounds 10.3.2, 10.3.3 and 10.3.5 to the Hearing Panel, after consultation with the Independent Person.**

## **11. Transitional Arrangements**

Regulations under the Localism Act will provide for –

- (a) transfer of Standards for England cases to local authorities following the abolition of Standards for England, whose regulatory role in handling cases ceased with effect from 31 January 2012;
- (b) a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- (c) removal of the power of suspension from the start of the transitional period; and
- (d) removal of the right of appeal to the First Tier Tribunal from the start of the transitional period;
- (e) the new arrangements being adopted by full Council and brought into operation not later than 1 July 2012.

## **12. Alignment to Council Priorities**

This report does not relate directly to any Council priority.

## **13. Wards/Communities Affected**

All Wards within the District are affected by this report.

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**Background Papers:** The Localism Act 2011  
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

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### **Lead Contact Officer**

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**Appendices attached to this report:**

Appendix 1	Draft Code of Conduct based on LGA template
Appendix 2	DCLG - Illustrative text
Appendix 3	List of recommendations detailed in this report

## Breckland Council

### Code of Conduct



Breckland Council have adopted this Code setting out the expected behaviours required of its Members or Co-opted Members, acknowledging that they each 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 all Councillors must be 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 authority.

**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.

The Act further provides for registration and disclosure of interests and in Breckland District this will be done as follows:

- On taking up office a Member or Co-opted Member must, within 28 days of becoming such, notify the Monitoring Officer of any 'disclosable pecuniary interests', as prescribed by the Secretary of State.
- On re-election or re-appointments, a Member or Co-opted Member must, within 28 days, notify the Monitoring Officer of any 'disclosable pecuniary interests not already included in his or her register of interests.
- If a Member or Co-opted Member is aware that they have a 'disclosable pecuniary interest' in a matter they must not participate in any discussion or vote on the matter at a meeting.
- If a Member or Co-opted Member is aware of a 'disclosable pecuniary interest' in a matter under consideration at a meeting but such interest is not already on the Council's register of interests or in the process of entry onto the register having been notified to the Monitoring Officer, the Member or Co-opted Member must disclose the

'disclosable pecuniary interest' to the meeting and register it within 28 days of the meeting at which it is first disclosed.

*NB Further details will be required once the Regulations are published and the definition of DPI is issued.*

As a Member of Breckland Council, your conduct will in particular address the statutory principles of the Code of conduct by:

- Championing the needs of residents – the whole community and in a special way your constituents, including those who did not vote for you - 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 yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Breckland area or the good governance of the authority in a proper manner.
- Exercising Independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties as a Member/Co-opted Member of this authority.
- 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 your decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority'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 you 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 your legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing your colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between you that is essential to good local government.
- Always treating people with respect, including the organisations and public you engage with and those you work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

**Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity**

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

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 or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

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.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

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.

You must declare any private interests, both pecuniary and non-pecuniary, 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 conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure 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.

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.

**Registering and declaring pecuniary and non-pecuniary interests**

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.

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.

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'.<sup>1</sup>

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.

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.

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority'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.

## Appendix 3

### List of recommendations

#### Recommendation 1

- a. That the Council delegates to the Audit Committee, the role of monitoring Standards issues.
- b. **That training is provided for the Members of the Audit Committee in order to support them in carrying out this additional role.**
- c. That when required by the Monitoring Officer, a Hearing Panel comprising 3 elected Members of the Audit Committee, will be called to sit for cases referred to it by the Monitoring Officer;
- d. That the current Standards Committee be dissolved with effect from 30 June 2012 if there are no outstanding cases, or until such later date as outstanding cases are resolved.

#### Recommendation 2

- a. That the Code of Conduct attached in Appendix 1, be adopted by Council,
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer is instructed, after consultation with the Leader of the Council, to add to the Code of Conduct provisions which is considered to be appropriate for the registration and disclosure of interests other than DPIs and bring back to Council for approval.

#### Recommendation 3

- a. That the Monitoring Officer is instructed to draft the arrangements documents based on the outcome of this meeting, for consideration by Council at its meeting on 5 July 2012.
- b. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- c. That the Monitoring Officer be given delegated power, after consultation with the Independent Person(s), to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that the Monitoring Officer be given discretion to refer decisions on investigation to the Hearing Panel of the Audit Committee, where the Monitoring Officer feels that it is inappropriate for him/her to take the decision, and to report annually to Audit Committee on the discharge of this function;
- d. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer after consultation with the Independent Person, be given the powers to close the matter, providing a copy of the report and findings of the investigation to the complainant, the Member concerned, the Independent Person and where

appropriate to the Town / Parish Council, and report the findings to the Audit Committee for information;

- e. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person(s) be authorised to seek local resolution in appropriate cases. Where such local resolution is not appropriate or not possible, the Monitoring Officer is to report the investigation findings to a Hearings Panel of the Audit Committee for local Hearing;
- f. That Council delegate powers to the Audit Committee and any sub-group (comprising of a minimum of 3 Members of the proposed Audit Committee) such in respect of a Member who is found on investigation to have failed to comply with the Code of Conduct, such actions to include –
  - I. Formal censure of the Member
  - II. Reporting its findings to Council [*or to the Town / Parish Council*] for information (not optional);
  - III. Recommending to the Member's Group Leader (or in the case of non-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
  - IV. Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - V. Instructing the Monitoring Officer to [*or recommend that the Town / Parish Council*] arrange training for the Member;
  - VI. Removing the Member [*or recommend to the Town / Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Town / Parish Council*];
  - VII. Withdrawing [*or recommend to the Town / Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
  - VIII. Excluding [*or recommend that the Town / Parish Council exclude*] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- g. That, as soon as is practicable, in liaison with other District Authorities and the Norfolk Association of Local Councils, to engage with all elected District and Town / Parish Members, to advise on the new arrangements and how the Standards regime will operate.

#### **Recommendation 4**

- a. That Council agree to appoint one Independent Person
- b. That the recommendation of the Independent Remuneration Panel regarding the allowance to be made payable to the Independent Person be approved at a rate of £42 per meeting plus travel and expenses.

- c. That the appointment of the Independent Person is approved by a positive majority of the Council at this meeting. In the case of Breckland Council, this will require a positive vote from a minimum of 28 Members of the Council regardless of the number of Members present at the meeting, Details of the recommended applicant to be confirmed at this meeting.
- d. That the appointment of the Independent Person is initially for the period of 1 July 2012 to the date of the Annual Council meeting in May 2013.
- e. That the Monitoring Officer is authorised to make arrangements with other Local Authorities to utilise their Independent Person should the need arise and to then seek approval from full Council.

#### **Recommendation 5**

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

#### **Recommendation 6**

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

#### **Recommendation 7**

The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a Member, when acting as a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers, or where the Member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors, must withdraw from dealing with the entire matter in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.

## **Recommendation 8**

That Council delegate the power to grant dispensations –

- a. on Grounds set out in Paragraphs 10.3.1 and 10.3.4 of this report to the Monitoring Officer with an appeal to the Hearing Panel, and
- b. on Grounds 10.3.2, 10.3.3 and 10.3.5 to the Hearing Panel, after consultation with the Independent Person.