

**6 June 2012**

**Localism Act 2011– Changes to the Standards Regime**

**Report of the Clerk**

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**1      Summary**

- 1.1    At its meeting on 7 December 2011, the Authority received a report on the Localism Act, which received royal assent on 15 November 2011. The report included an outline of the provisions in the Act amending the arrangements governing standards of Member conduct, and indicated that the Authority would need to put in place revised arrangements for promoting and maintaining high standards of conduct. The Government has indicated that this is likely to take effect from 1 July 2012, though this is yet to be confirmed.
- 1.2    The options for successor arrangements were considered at Standards Committee on 16 December 2011 and by the Corporate Management Team on 10 January 2012 and 24 May 2012. As the requirements of the Act are likely to be brought into force between the date of this Authority meeting and the next meeting in September, it is necessary to make certain decisions now, to ensure the Authority is compliant with the relevant requirements of the Localism Act when these are brought into force. This report sets out the decisions required and the arrangements proposed.

**2      Recommendations**

- 2.1    That the Code of Conduct for Members and Co-opted Members, set out in Appendix 1 to the report, be adopted with effect from 1 July 2012 or (if different) the date upon which Section 27 of the Localism Act is brought into force.
- 2.2    That the adoption of the Code be publicised via the Authority's website.
- 2.3    That the Standards Committee and the Governance Committee be replaced by a new Standards and Governance Committee, with terms of reference as set out in Appendix 2 to the report.
- 2.4    That Standing Orders be amended to require a Member who has a discloseable pecuniary interest, in an item of business being considered at a meeting of the Authority, a committee or sub-committee, to withdraw from the

room during the discussion of and vote on that item.

- 2.5 That the Standards and Governance Committee review arrangements for handling allegations of failure to comply with the Code, and recommend relevant procedures to the Authority for approval. Pending such approval, in the event that an allegation of failure to comply is received, the Clerk be authorised, in consultation with the Chairman of Standards and Governance Committee to modify and apply existing procedures as necessary for the handling of that allegation.
- 2.6 That authority be delegated to the Standards and Governance Committee to oversee the process of recruitment of an independent person, including the ability to establish a selection panel from amongst its members to interview candidates and make a recommendation to the Authority for appointment. This includes flexibility to recommend jointly recruiting to a pool of two or three independent persons to be shared with other authorities, should the current HIOWLA discussions lead to collaboration.
- 2.7 That the Clerk, in consultation with the Chairman, be authorised to make any further minor or consequential amendments to these arrangements, where necessary to ensure compliance with regulations and guidance when published by Government.
- 2.8 That scope for co-operation and collaboration with other authorities continue to be explored, and the position on this be reviewed in September 2012.

### **3 Background**

- 3.1 The present national standards regime came into being in 2000, as part of the Local Government Act 2000, and was subsequently amended by the Local Government and Public Involvement in Health Act 2007. The 2000 Act established a National Model Code of Conduct, Local Standards Committees and a Standards Board for England (subsequently retitled "Standards for England") as the statutory regulator. The Model Code of Conduct set out expected national standards of behaviour for elected and co-opted members. Standards Committees were established to assist local authorities in maintaining good standards whilst the Standards Board for England was established to provide an over-arching framework for standards of conduct and to monitor and investigate complaints. Amendments introduced in May 2008 led to the determination of complaints against members being delegated to Local Standard Committees in all but the most serious cases.

### **4. The Localism Act 2011**

- 4.1 The Act abolishes the current standards regime governing the conduct of members. As a result, the Standards Board for England has been abolished,

and the requirement for authorities to have Standards Committees and the National Model Code of Conduct abolished from a date to be appointed. In the meantime the existing Code of Conduct and arrangements for complaints has continued to apply. The implementation date is likely to be 1 July 2012, but confirmation of this is awaited. It is anticipated that there will be further regulations and guidance issued by the Government, prior to implementation.

- 4.2 **Code of Conduct** - The Act provides that Fire and Rescue Authorities (“FRAs”) have a duty to promote and maintain high standards of conduct by members and co-opted members. FRAs must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the HFRA when they are acting in that capacity which must be consistent with the Seven Principles of Public Life enunciated by the Nolan Committee:- selflessness, integrity, objectivity, openness, accountability, honesty and leadership. The Code to be adopted can be a revision of the existing code or a totally new Code.
- 4.3 **Register of Interests** - The Register of Interests must remain and shall include the registration of discloseable pecuniary interests (to be defined further in regulations). The Code of Conduct must include the provision HFRA considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests and non-pecuniary interests. The Register must be available for inspection and be published on the FRA’s website. The registration of discloseable pecuniary interests must be made within 28 days of taking office. Those interests to be declared are those of the member and their partner.
- 4.4 The Act imposes a criminal offence for the non disclosure of a pecuniary interest, for participating in any discussion or vote on the matter in which the member/co-opted member has a pecuniary interest or for taking any steps in relation to the matter to be considered, without reasonable excuse. The Act makes it a criminal offence to provide knowingly or recklessly false or misleading information in relation to the disclosure of a pecuniary interest. A person found guilty could be fined up to £5000 and disqualified for up to five years from being a councillor. A decision to prosecute would be a matter for the Director of Public Prosecutions.
- 4.5 **Complaints** - In addition, FRAs must put in place a system to deal with allegations that members have breached the code. FRAs must also put in place arrangements for investigating allegations under the code of conduct and for making decisions regarding the allegations. The Act does not prescribe what those arrangements should be, but leaves it open to FRAs to adopt a voluntary standards committee or some other approach. FRAs must deal with complaints of a breach of the code, by considering whether an individual complaint merits investigation, and if so, it must investigate the allegation. If

the FRAs find that there has been a breach, it must then decide whether and what action to take.

4.6 **Independent Person** - FRAs must also appoint an “independent person” whose view must be sought before reaching a decision on an allegation. The "independent person" cannot have been a member or co-opted member of the FRA in the previous five years. There are also other provisions regarding who may qualify as an independent person.

4.7 **Sanctions** - If a complaint is upheld, sanctions available might include, for a minor matter, a formal letter or other recording of the matter. Where there has been a more serious breach of the code, formal censure might be required.

## 5. **Actions to be taken by HFRA**

5.1 To accord with the requirements of the Act the actions to be taken by HFRA are to:-

- a) review, adopt, revise or replace its Code of Conduct;
- b) review and amend the process for dealing with and investigating complaints against members including the sanctions available against members when they are found to be in breach of the Code;
- c) consider whether or not it wants to retain a Standards Committee with independent members to fulfil its duty to promote high standards of conduct and to administer complaints made under the Code of Conduct;
- d) put in place the arrangements for involvement of an Independent Person; and
- e) review meeting procedures to deal with the involvement of members when they have a pecuniary interest and publish those interests.

## 6. **Co-operation and Collaboration with other Hampshire Authorities**

6.1 Consideration at Standards Committee and Corporate Management Team has identified a wish to explore scope for co-operation and collaboration with other local authorities in Hampshire, in connection with the development of a common Code of Conduct and arrangements for handling complaints. This would minimise the risk of confusion arising for those who are members of more than one local authority, and who would otherwise be subject to more than one code of conduct with potentially differing requirements. The Clerk and Chief Officer have raised this issue through HLOWLA and discussions are continuing. As these are unlikely to be concluded by 1 July, it is proposed to proceed to introduce appropriate arrangements within the Authority, while continuing to explore possible joint arrangements with other authorities. Progress on this would then be reviewed by the Authority in September 2012.

## **7. Code of Conduct**

- 7.1 Views expressed by Members suggest that there is no fundamental need to change the “general obligations” of the existing Code, and that a Code which is substantially similar to the existing Code should be adopted, subject to this being modified where necessary to meet the requirements of the Act.
- 7.2 The draft Code in Appendix 1 meets these requirements. Further, it is based on two of the “model” codes that have been produced, one by the Local Government Association, and one by the Association of Council Secretaries and Solicitors. This means that it is more likely to be in similar form to the codes adopted by other authorities, supporting the achievement of a common approach with other authorities. It is capable of review and further evolution should the HIOWLA discussions lead to a common code for the Hampshire authorities.
- 7.3 The Act requires that the Authority to publicise the adoption of its Code, in such manner as it considers is likely to bring it to the attention of persons living in its area. It is proposed this is via publication on the Authority’s website.

## **8. Standards Committee**

- 8.1 Views expressed by Members favour replacing the Standards Committee and Governance Committee with a new, combined, Standards and Governance Committee. There would be no independent members. The proposed terms of reference for the new Committee are in Appendix 2.

## **9. Disclosure of Interests**

- 9.1 At the date of preparing this report, the Government has still not published the necessary regulations defining discloseable pecuniary interests. This makes it difficult to judge whether there are other types of pecuniary or non-pecuniary interests for which the Authority should make additional provision for disclosure.
- 9.2 It is proposed therefore not to make any provision at this stage for interests other than discloseable pecuniary interests to be disclosed. It is also proposed that this situation be reviewed by the Standards and Governance Committee when the Regulations are available, and the Authority advised as to whether any change to this position is appropriate.
- 9.3 The Act provides that, where a member has a discloseable pecuniary interest at a meeting, they cannot participate in discussion or voting on that item. However, it is at the discretion of the Authority as to whether provision is to be made in standing orders for the member to also be required to leave the room

for that item.

- 9.4 It is proposed that such provision should be made in standing orders. A requirement to leave the room in such circumstances continues the existing practice whereby a member with a prejudicial interest in an item is required to leave the room for the discussion and voting on that item. This would protect the member against any allegations that they are improperly exerting influence through observation of the discussion and vote.
- 9.5 However, it is also proposed that a member who has a discloseable pecuniary interest at a meeting may nevertheless address the meeting in the same way that a member of the public can, under the deputations procedure. This would be subject to the member leaving the meeting once their representations have been made. This would, again, continue the existing practice in relation to a member who has disclosed a prejudicial interest.

## **10. Handling of Complaints**

- 10.1 The Standards Committee noted that the existing procedures for handling of complaints against members were fair and thorough, but had not yet been tested due to an absence of actual complaints to consider. Members had also been trained in how to operate those procedures. It was felt therefore that investment of time and resource in devising a completely different set of arrangements could not be justified. It is proposed therefore that, in principle these procedures should be retained, subject to modification where necessary to comply with changes in the Localism Act.
- 10.2 It is proposed therefore to delegate authority to the Standards and Governance Committee to review the position and recommend the relevant procedures to the Authority for approval. To cover the possibility that an individual complaint may be received before those arrangements are agreed, the Clerk would be given authority, in consultation with the Chairman of Standards and Governance Committee to modify and apply existing procedures as necessary for the handling of that complaint.

## **11. Involvement of Independent Person**

- 11.1 As indicated above, the Act requires that the Authority appoint at least one independent person whose views are to be sought, and taken into account, before making a decision on an allegation being investigated. There are certain restrictions on who may be appointed, and there must be an advertised recruitment process, with the appointment approved by a majority of Members.
- 11.2 The proposal is to delegate authority to Standards and Governance Committee to oversee the recruitment process, including the ability to establish a selection panel from amongst its members to interview candidates and make a

recommendation to the Authority for appointment. This would include flexibility to jointly recruit to a pool of two or three independent persons to be shared with other authorities, should the current HIOWLA discussions lead to collaboration.

## **12. Conclusion**

- 12.1 The report outlines the implications of the Localism Act 2011 for the Authority in respect of the standards regime and, based on views expressed by Members, proposes a set of arrangements to ensure compliance from the date the legislation is brought into force. Alongside these arrangements, discussion with other authorities would continue through HIOWLA to explore potential for co-operation and collaboration.
- 12.2 As statutory regulations and guidance are still awaited from the Government, it is proposed that the Clerk, in consultation with the Chairman, be authorised to make any further minor or consequential amendments to the arrangements, where necessary to ensure compliance with the regulations and guidance when published.

## **13 Equality Impact Assessment**

- 13.1 The proposed revised code of conduct makes specific reference to the need to treat others with respect and to comply with equalities legislation.

### Section 100D – Local Government Act 1972 – background papers

The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of this report.

N.B. The list excludes:

Published works.

Documents that disclose exempt or confidential information as defined in the Act.

TITLE

FILE

None.

## Appendix 1:

### Hampshire Fire and Rescue Authority

#### Members' Code of Conduct

This Code is adopted pursuant to the Authority's statutory duty to promote and maintain high standards of conduct by members and co-opted members of the Authority. It applies to all members and co-opted members, when acting in their role as a member or co-opted member of the Authority.

This Code is not intended to be an exhaustive list of all the obligations placed on members and co-opted members of this Authority. It is your responsibility to comply with the following provisions of this Code as well as other legal obligations beyond the scope of this Code.

This Code is based on and consistent with the following principles:

**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.

## **Part 1: General obligations of members and co-opted members**

1. You must treat others with respect.
2. You must not do anything which may cause the Authority to breach equalities legislation.
3. You must not bully any person.
4. You must not intimidate, or try to intimidate, anyone who has complained about you or who may be involved with a complaint about you.
5. You must not do anything which compromises the impartiality of the Authority's officers.
6. You must not disclose confidential information (other than in very limited circumstances permitted by law, and following consultation with the Authority's Monitoring Officer).
7. You must not prevent a person from gaining access to information to which they are entitled.
8. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.
9. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.
10. You must, when using or authorising the use by others of the resources of the Authority, act in accordance with the Authority's reasonable requirements, and ensure that the resources are not used improperly for political purposes.
11. You must have regard to the Code of Recommended Practice on Local Authority Publicity.
12. When reaching decisions, you must have regard to relevant advice from the Authority's officers, and give reasons for decisions.

## **Part 2: Registration and Disclosure of Interests**

13. You must, within 28 days of becoming a member or co-opted member, notify the Authority's Monitoring Officer of any disclosable pecuniary interest as set out in Part 3 of the Code, 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 as a husband or wife, or as if you were civil partners, and where you are aware that that other person has that interest. The Authority's Monitoring Officer will cause the interest notified to be entered in the Authority's Register of Interests.

14. Where a disclosable pecuniary interest has not been entered in the Register of Interests, and it is a discloseable pecuniary interest in any matter being considered at a meeting of the Authority, committee or sub-committee at which you are present, you must disclose the interest to the meeting, except where the matter is a 'sensitive interest'.<sup>1</sup> Where the interest is a 'sensitive interest', you must disclose merely *the fact that* you have a discloseable pecuniary interest in the matter concerned.
15. Where you have a discloseable pecuniary interest in any matter being considered at a meeting of the Authority, committee or sub-committee, you must not participate in discussion of, or vote on, that matter, and must withdraw from the room where the meeting is being held, unless you have obtained a dispensation from the Standards and Governance Committee. However, this does not prevent you from making representations on the matter to the meeting, in accordance with the Authority's deputations procedure, provided that you withdraw from the room when those representations are concluded and before any discussion or vote takes place.
16. Following any disclosure of an interest not on the Authority's Register of Interests maintained by the Authority's Monitoring Officer, or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
17. You are not required to register or disclose any pecuniary or other interest that is not a disclosable pecuniary interest set out in Part 3 of the Code.

### **Part 3: Disclosable Pecuniary Interests**

18. [When the Secretary of State makes regulations setting out the interests that constitute "disclosable pecuniary interests", these will be reproduced here]

Adopted by the Hampshire Fire and Rescue Authority

Date: June 2012

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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 2:**

### **Terms of Reference Standards and Governance Committee**

#### **Standards**

1. To oversee the discharge of the Authority's duty to promote and maintain high standards of conduct by Members and Co-opted Members.
2. To promote training and advice to Members and Co-opted Members on the Code of Conduct, relevant protocols adopted by the Authority, and related matters to enable high standards of conduct to be maintained
3. To advise the Authority on the revision or replacement of its Code of Conduct for Members and Co-opted Members, and on the review of protocols relevant to ethical standards.
4. To advise the Authority on the arrangements to be applied for the investigation and determination of allegations of failure to comply with the Code of Conduct for Members and Co-opted Members, including advice on the involvement of at least one independent person in those arrangements, and to handle and determine such allegations in accordance with the approved procedures.
5. To consider and determine an application by a Member or Co-opted Member for the grant of a dispensation under Section 33 Localism Act 2011, relieving the restrictions on participation in, and voting on, a matter in which the Member or Co-opted Member has a disclosable pecuniary interest.

#### **Governance**

6. To adopt, review and amend the corporate governance framework for the Authority.
7. To receive and consider reports from the Treasurer on internal audit strategy, planning and delivery.
8. In line with its role as the body charged with responsibility for governance, to receive, consider and approve the draft of the formal Statement of Accounts (incorporating the Annual Governance Statement) in compliance with the statutory deadline.
9. To receive and consider progress reports on actions taken to satisfy outcomes and recommendations from external and internal audit reports.
10. To review the risk register and receive reports on risk management