

HLOWLA

(date of meeting to be confirmed)

Localism Act– Options for a Pan-Hampshire Members’ Code of Conduct

Report of the Clerk to Hampshire Fire and Rescue Authority

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1 Summary

- 1.1 This report follows on from a discussion at HLOWLA on 22 June 2012, when Members resolved that further work be undertaken to explore the options for a pan-Hampshire Members’ Code of Conduct. The report sets out an analysis of the main options, with the advantages and disadvantages in each case.
- 1.2 It is not within the scope of the report to provide detailed guidance on the requirements of the Localism Act regarding Member conduct. Members are referred to the report of 22 June 2012, which included a summary of the changes introduced by the Localism Act. Where further or more detailed advice on these requirements is sought, Members should refer to their authority’s monitoring officer.

2 Background

- 2.1 The Localism Act 2011 has amended the arrangements governing standards of member conduct that were previously set out in the Local Government Act 2000. Local authorities, including fire and rescue authorities and national park authorities, were therefore required to put in place revised arrangements in this regard from 1st July 2012.
- 2.2 At the HLOWLA meeting on 22 June 2012, it was reported that Members of Hampshire Fire and Rescue Authority (“HFRA”) had identified that there was potential scope for co-operation and collaboration between authorities in implementing some or all of these arrangements. HFRA Members had asked that this be raised within the HLOWLA arena so that such potential could be further explored.
- 2.3 HFRA comprises 25 Members – 19 Members of Hampshire County Council, and 3 Members of each of Portsmouth and Southampton City Councils. A number of HFRA Members are also members of district

- councils and/or parish councils. The previous arrangements under the Local Government Act 2000 required all such authorities to adopt a code of conduct based on a statutory Model Code, with only very limited scope for variation. Under the Localism Act, it is possible for each authority to adopt a different Code. HFRA Members recognised that this could create potential for confusion, if the ethical standards to which they must adhere vary depending on the capacity in which they are acting, or which authority's meeting they are attending. It was felt that this may increase the risk of inadvertent failure to comply.
- 2.4 It was considered that the same situation and risk may arise for Members who are "double" or "triple-hatted" in other settings e.g. a district councillor who is also a parish councillor and/or a member of one of our two national park authorities. There is also the possibility that Members representing their authorities on joint committees would be subject to differing codes of conduct while engaged on essentially the same business. This may cause confusion not only for Members, but also for stake holders and members of the public.
- 2.5 The meeting resolved: "That the HIOWLA authorities expressed support for a pan-Hampshire code of conduct and that Kevin Gardner (*on behalf of the Clerk to HFRA*) would lead on the project to explore co-operation and collaboration between the HIOWLA authorities to produce a joint code to implement the requirements of the Localism Act on Members' conduct."
- 2.6 It was acknowledged that, for reasons of timing, each of the HIOWLA authorities would need to proceed to put in place their own arrangements from 1 July 2012, to ensure that they complied with the Localism Act. However, this left open the possibility of those authorities agreeing to adopt a different code, which could be a pan-Hampshire Code, at a later date.
- 2.7 There was no wish from the meeting to explore further co-operation in the form of a joint standards committee or joint arrangements for complaints handling. These aspects have not been explored further, therefore.
- 2.8 In considering the options for a pan-Hampshire Code, a period of time has been allowed for the Localism Act arrangements to bed down, to establish whether, and the extent to which, the potential confusion and perceived issues relating to "multi-hatted" members have materialised in practice. Members' experience of this will be invaluable in judging whether there is indeed a need for greater consistency in approach.
- 2.9 [Add summary of any views expressed in consultation]. This paper sets out the suggested options for greater collaboration.

3 Option 1 – Consistent Approach to Disclosable Pecuniary Interests

3.1 At the HIOWLA meeting on 22 June 2012, the Regulations on disclosable pecuniary interests (“DPis”) had only recently been published, and had yet to come into force.¹ These are now in place and provide a basic level of commonality across all of the authorities as to the requirements upon Members for the registration and disclosure of pecuniary interests. The first option therefore involves a view that, in the light of experience in practice, this now secures a sufficient level of consistency and that no further provision is required.

3.2 The advantages of this option are:

- It strikes a balance between consistency in the key area of registration and disclosure of significant pecuniary interests, while recognising that authorities have discretion to adopt additional provisions where they consider this appropriate to local needs
- It is easy to implement, representing the status quo

3.3 The disadvantage of this option is:

- The ability for authorities to adopt additional provisions in their codes enables further requirements to be adopted on the registration and disclosure of pecuniary interests other than DPis (e.g. gifts and hospitality), and non-pecuniary interests. This may still lead to confusion for multi-hatted members therefore, who would still need to adhere to slightly different rules on registering and disclosing interests

4. Option 2 – Consistent Approach to DPI’s, other Pecuniary and Non-Pecuniary Interests

4.1 This option goes one step further than Option 1 and would involve all authorities adopting a common set of requirements concerning registration and disclosure of pecuniary interests other than DPis (e.g. gifts and hospitality), and non-pecuniary interests. This would, in turn, enable consistent documentation to be used for the registration of interests. Further, there could be consistency as to when a Member, who has a DPI or other interest in a matter being considered at a meeting, is required to leave the meeting room for that item.

¹ The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which came into force on 1 July 2012

4.2 Research shows that *[include here information regarding how similar, or how far apart the authorities are in these areas once the information is received from the other Hampshire authorities]*

4.3 The advantage of this option would be:

- All authorities would operate consistent provisions regarding all aspects of the registration and disclosure of interests, reducing risk of confusion amongst Members, and of inadvertent failure to comply with the relevant authority's code

4.4 The disadvantage of this option would be:

- It still does not address the issue of consistency in requirements concerning aspects of conduct other than registration and disclosure of interests

5 **Option 3 – Consistent Approach to DPI's, other Pecuniary and Non-Pecuniary Interests, and other Aspects of Conduct**

5.1 This Option involves going one step further than Option 2 by ensuring consistency in provision regarding aspects of conduct other than registration and disclosure of interests. While the precise wording may differ slightly from one authority's code to another, many currently include provision in areas such as the following:

- Treating others with respect
- Maintaining confidentiality
- Observing requirements of equalities legislation
- Upholding, and not compromising, the impartiality of officers
- Not using position as a Member to secure an advantage
- Using resources of the authority for authorised purposes, and not for political purposes

5.2 There are two ways in which greater consistency could be achieved.

5.3 **Option 3A** would involve agreeing the principles (such as those listed in para 5.1 above) which should be covered by each authority's Code, yet leave it at each authority's discretion to settle upon its own precise wording. **Option 3B** would involve agreeing the actual wording for all authorities to adopt.

5.4 The advantage of Option 3A would be that:

- There is consistency in the principles of proper conduct that members are required to observe
- There is discretion for authorities as to the style in which the requirements are expressed
- It may better facilitate agreement and adoption, as it would not be necessary to resolve issues where there are different views on detailed drafting

5.5 The disadvantage of Option 3A would be that:

- There is still some minor inconsistency in the particular requirements Members are required to observe

5.6 The advantage of Option 3B would be that:

- It achieves complete consistency across all authorities on not only the principles, but the precise details, of the requirements placed upon Members

5.7 The disadvantage of Option 3B would be that:

- It may be viewed as too prescriptive and not recognising a role for local variation to meet local needs
- It may be difficult to reach agreement.

6. **Comment**

6.1 This part of the report sets out some considerations to be borne in mind in weighing up the above options.

6.2 The experience of Members in the period since July 2012, operating within the Localism Act requirements, is key. For example, some Members may feel that the concerns expressed prior to implementation about potential confusion for “multi-hatted” members, have not materialised, or have been largely addressed by the introduction of universal statutory requirements on the registration and disclosure of DPIs. To the extent that there may be some remaining inconsistency amongst authorities on other aspects of their Codes, it may be felt that this is not significant, a natural consequence of applying principles of localism, and insufficient to justify the investment of further time and resource in the development of an overly prescriptive, common Code. Where this is the view, Option 1 would provide a basis for the way forward, and would involve maintaining the status quo.

6.3 At the other end of the spectrum, where Members’ views based on their experience is that consistency in all aspects is required, Option 3B would

be relevant. In this respect, it is important to recognise that, under the Localism Act, it is for each relevant authority to adopt a Code dealing with the conduct that is expected of Members and Co-opted Members of that authority, when they are acting in that capacity, based on the seven “Nolan” principles. An authority cannot be legally required to adopt a particular Code simply because it is being adopted by neighbouring authorities. The adoption of a pan-Hampshire Code, therefore, would involve each authority voluntarily recognising the value that was added by having a Code that shared the same essential characteristics as those of neighbouring authorities. It may therefore facilitate the reaching of voluntary agreement if the adopted solution comprises a core set of common principles, yet builds in some local discretion for authorities to supplement these where it considers necessary to meet local needs.

- 6.4 Where it is felt that a middle line is required, Options 2 and 3A may be attractive: Option 2 achieves consistency in the registration and disclosure of DPLs, other pecuniary and non-pecuniary interests; Option 3A extends this consistency further into the core values in other areas of conduct, yet leaves it to authorities to choose how to express these, and/or to add further values where they consider it necessary to do so.
- 6.5 Where the preferred option is Option 3B, then in theory one way in which this could be implemented is by one authority’s existing Code being adopted by all the other authorities. However, it may be more conducive to securing agreement if any pan-Hampshire Code that emerges were to be seen as a “new” Code, not originating from any one authority, but an evolution building on the work and experience to date of the Members of all the HIOWLA authorities.

7. Conclusion

- 7.1 This report has set out the main options for the development of a pan-Hampshire Code of Conduct for Members, together with an assessment of the advantages and disadvantages of each. A pan-Hampshire Code offers the opportunity for greater consistency in approach amongst the HIOWLA authorities towards their responsibilities regarding Member conduct under the Localism Act .

8. Recommendation

- 8.1 That the options for a pan-Hampshire Code of Conduct are considered, and a steer given as to the preferred way to proceed.