

CONSTITUTION COMMITTEE – 22 JUNE 2012

SUPPLEMENTARY REPORT OF THE CHIEF EXECUTIVE

REVIEW AND REVISION OF THE CONSTITUTION

Purpose

1. The purpose of this report is to present detailed changes to the Constitution following further work by officers on the implications of the Localism Act and discussion with members about how the County Council should carry out its duties under the Act to promote and maintain high standards of conduct.

Background

2. As indicated in the report previously circulated to members, a substantial number of the proposed changes to the Constitution arise from the abolition of the previous Standards regime and putting in place a new system in line with the Localism Act and associated Government Regulations. The detailed changes proposed are set out in Appendix A to this report. Those relating to Standards of Conduct have been discussed with the elected members of the Standards Committee and incorporate their recommendations.

New System for Standards

3. The main report to the Committee explains the principal requirements. The Localism Act removes the requirement for the County Council to have a Standards Committee. It is therefore proposed that the majority of the current functions of the Standards Committee are given to the Corporate Governance Committee. However, this will not extend to the framework for dealing with complaints, details of which are set out in paragraphs 4 – 12 below.

Framework for Dealing with Complaints

4. The provisions of the legislation are that the authority must have in place:-
 - (a) arrangements under which allegations of a breach of the Code can be investigated; and

(b) arrangements under which decisions on allegations can be made.

‘Allegation’ means a written allegation of breach of the Council’s Code of Conduct.

5. It is also a requirement of the legislation that least one independent person must be appointed whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate and whose views may be sought about other allegations. Following discussion with the elected members of the Standards Committee, it is proposed that three independent persons are appointed to form a Panel from which a person can be selected whose views must be sought and taken into account in relation to allegations of a breach of the Members’ Code of Conduct.
6. In the case of pecuniary interests, the Act places the usual obligations in terms of declarations and not participating in discussions and voting. Failure to comply with these provisions now becomes a criminal act, prosecutions for which can only be instituted by or on behalf of the Director of Public Prosecutions.
7. The remaining elements of the Code would be matters for the authority, but there would appear to be no sanctions available, other than the weight of a public censure. This means that in practice the enforcement of high standards of conduct will largely revert to the political groups and ultimately the ballot box.
8. A mechanism will be required for dealing with these issues. It is still open to the Council to retain a specific Standards Committee. Alternatively, these matters could be overseen by the Corporate Governance Committee. At present, both the Corporate Governance and Standards Committees have a role in promoting high standards of conduct within the authority. The Corporate Governance Committee is concerned with the operation of the Council’s Code of Governance, which means exercising a quality assurance role over the Council’s governance arrangements and processes including audit arrangements. The Standards Committee is concerned with the operation of the Codes of Conduct covering members and officers and has a focus on the behaviour of individuals. Both have separate memberships.
9. Recent events, notably the discussions within the Corporate Governance Committee arising from the Internal Audit Service report into the whistle blowing allegations in respect of East Midlands Councils and the response to a Freedom of Information request about chauffeured transport, have pointed to the need for a degree of separation to be maintained. Those cases resulted in complaints being made that the member concerned had breached the Council’s Code of Conduct.

10. It would clearly not be possible for the same members who have been involved in addressing the outcome of an audit report involving a member of the Council to go on to deal with a subsequent complaint arising from that report. It is, therefore, suggested that a separate 'Member Conduct Panel' will be required with a membership which excludes members of the Corporate Governance Committee.
11. In designing a new process, the following key principles have been identified:-

Member Involvement

- (a) It is appropriate for elected members to be involved at key stages in the process to make significant decisions.
- (b) Unless regulations are issued which disapply the usual rules for membership of committees, the rules of political balance will apply to any member body with decision-making powers.
- (c) In accordance with the provisions of the Localism Act, members making a decision on an allegation that has been investigated must take into account the views of an independent person.

Monitoring Officer

- (d) The Monitoring Officer is able to exercise greater powers than previously to deal with Standards complaints. This is subject to the view taken about the role of elected members, particularly in the light of paragraph (a) above. The Monitoring Officer should have greater power to deal with complaints which do not merit a full investigation or hearing.

Simplifying the Process

- (e) In the interests of making processes transparent and easy to understand, aspects of the current Standards regime should be simplified, improved or removed.
- (f) Given that the consequences of a Standards complaint being proved against a member are now more limited and comprise at most:-
 - (i) formal letter stating that there has been a breach of the Code;
 - (ii) formal censure by the Standards body;
 - (iii) publicity consequent upon (i) or (ii) above.

It seems unlikely that provisions in the Human Rights Act or elsewhere requiring an appeal will be engaged. For similar reasons, it seems reasonable to remove the current right of a complainant to seek a review if a decision is made not to investigate and to take a view that legal representation is not required at hearings.

- (g) An area of difficulty has been the requirement for a Standards (Assessment) Subcommittee to consider the complaint and decide whether there should be an investigation without, in the majority of cases, knowing the views of the member who is the subject of the complaint. The greater flexibility under the new regime and the enhanced role of the Monitoring Officer, offers the opportunity to address these concerns.
12. In light of these principles, a new member conduct process is proposed which will enable the Monitoring Officer to dispose of complaints which do not merit formal investigation or can be resolved informally. It will also retain member involvement in deciding whether to undertake an investigation into a complaint and at a meeting in the form of a hearing to determine whether or not the Code of Conduct has been breached and what sanction may be imposed. A flowchart setting out that approach is attached as Appendix B to this report.

Code of Conduct for Leicestershire

13. The Act places the authority under a duty to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the authority must adopt a Code dealing with the conduct that is expected of members and co-opted members of the authority, when acting in that capacity.
14. The authority must secure that its Code, when viewed as a whole, is consistent with the principles of:-
- (a) Selflessness;
 - (b) Integrity;
 - (c) Objectivity;
 - (d) Accountability;
 - (e) Openness;
 - (f) Honesty;
 - (g) Leadership
15. It must also secure that its Code of Conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of:-

- (a) Pecuniary interests (as specified in regulations made by the Government)
 - (b) Interests other than pecuniary interests
16. Following discussion with elected members of the Standards Committee, it is proposed that the new Code of Conduct, attached as Appendix C to this report, retains most of the specific requirements from the current Code, including the following requirements:-
 - Not bullying or intimidating any person or acting in a way which may cause the authority to be in breach of equality legislation.
 - Dealing with information appropriately, e.g. not disclosing information provided in confidence and not preventing anyone from having access to information to which he/she is entitled.
 - Not acting in a way which could be regarded as bringing the office or authority into disrepute.
 - Having regard to relevant advice provided by local authority chief or statutory officers.
17. The opportunity has been taken, with the support of members of the Standards Committee, to remove the provisions limiting Executive Members attendance at Overview and Scrutiny Committees. This is largely regarded as having complicated and sometimes acted as a barrier to the smooth functioning of the County Council's work and has been the subject of much criticism in the past.
18. Codes of Conduct must include provisions in respect of registration and disclosure of interests. If a member has a disclosable personal, non-pecuniary interest, then he/she must notify the Monitoring Officer of details within 28 days of election or appointment to office. The requirement to keep the declaration up to date appears to have been abolished; however, following discussion with the elected members of the Standards Committee it is proposed that as a matter of good practice members should be required to keep the register up to date by notifying the Monitoring Officer of any changes within 28 days of their occurrence. The member must declare the existence of interests at meetings and, if the interest is also a disclosable pecuniary interest, the member may not participate in any discussion of the matter at the meeting or in a vote. Standing Order 30 requires the individual to leave the room while any such discussion or voting takes place.
19. Non-disclosure of a disclosable pecuniary interest and/or participation in any discussion or vote on a matter in which the member has a disclosable pecuniary interest is a criminal offence under the Localism Act.

Disclosable pecuniary interests are defined by statute and apply where the pecuniary interest belongs to the member or the member's spouse or civil partner. Following discussion with elected members of the Standards Committee, it is proposed that, as a matter of good practice, this definition is widened to include the interests of members of a councillor's family and of those having close association with a councillor.

20. The elected members of the Standards Committee have also suggested that, as a matter of good practice, existing provision relating to the declaring of gifts and hospitality are retained in the new Code. However, it is proposed that the value of gifts or hospitality be raised from £25 to £50.
21. As proposed in the report previously circulated to members, the Code attached as Appendix C to this report is intended to be an interim Code which will be revised as necessary in the Autumn following discussions with the District Councils with a view, if possible, to arriving at a single agreed Code.

Member Planning Code of Good Practice

22. The Localism Act removes the current provisions relating to predetermination. The Member Planning Code of Good Practice, Part 5A1 of the Constitution, will require revision in the light of this as it goes further than the legislation requires. Given the tight timescales, this has not yet been revised. The aim will be to present proposals to members for consideration in the Autumn.

Recommendations

The following sets out the recommendations to the County Council to give effect to the arrangements outlined in the report and supplementary report.

- (A) That the Committee indicates which of the options relating to the term of officer of the Leader it wishes to recommend (see Appendix A, Article 7.03, Pages 5 and 6).
- (B) That the County Council be recommended to agree as follows:-
 - (a) That the proposed changes to the Constitution as set out Appendix A to this supplementary report be approved, including the adoption of the revised Code of Conduct set out in Appendix C to this report;
 - (b) That it be noted that members will be required to register their interests under the new Code of Conduct within 28 days of its adoption and to advise the Monitoring Officer of changes as they occur;

- (c) That the Monitoring Officer be authorised to undertake the necessary steps to arrange for the appointment of three independent persons to form a Panel from which an independent person can be selected whose views must be sought and taken into account in relation to allegations of a breach of the Members' Code of Conduct in accordance with the provisions of the Localism Act 2011; those appointments to be made by a panel of members;
- (d) That the Monitoring Officer be authorised to undertake further discussions with the District Councils with the view to arriving at a single Code of Conduct for Leicestershire;
- (e) That the Monitoring Officer be authorised to make such temporary appointment to the Member Conduct Panel from amongst people serving as independent persons of a different relevant authority as he/she considers necessary to consider a particular assessment, review or hearing or for a particular period of time, in accordance with any statutory provisions in force for the time being;
- (f) That the list of meetings determined for the purposes of Standing Order 34(2) be amended to read as follows:-

*“Adoption Panel;
Approval of Premises Panel (Civil Marriages);
Childrens’ Community Homes and Service Teams Monitoring Panel;
Complaints Panel (School Curriculum and Religious Education);
Secure Accommodation Review Panel;
County Council Employment Panel;
Appointment Committee (Chief Officer);
Fostering Panel;
Disputes Panel;
Representations Panel (Independent providers of adult social care);
Member Conduct Panel;
Guardianship Panel;
Member Reference Panel on Quality and Safeguarding in Registered Care.”*

Background Papers

The Constitution of Leicestershire County Council.

Circulation under Local Issues Alert Procedure

None.

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List of Appendices

Appendix A – Proposed Amendments to the Constitution of Leicestershire
County Council

Appendix B – Flowchart for dealing with Complaints

Appendix C – Part 5A: Members' Code of Conduct

Equal Opportunities Implications

None.