

SC/009/11

Committee The Essex County Council and Essex Fire Authority Joint Standards Committee

Date 22 September 2011

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DEVELOPMENT OF A LOCAL CODE OF CONDUCT

1. Purpose of the Report

At its last meeting the Committee was informed that Essex County Council in July had agreed the following recommendations:

- (1) That, in principle, Council agrees it is in the best interests of both the Council as a whole and of all its members for there to be a voluntary Code of Conduct for Members.
- (2) That the Monitoring Officer take responsibility for the drafting of a code based upon the work being undertaken by the Local Government Association, the Association of Council Secretaries and Solicitors (the Monitoring Officer's professional body) and work by Monitoring Officers in local councils acting collectively.

The Committee agreed that it should contribute to the discussion around the development of a local code of Conduct and the role of a Standards Committee post the enactment of the provisions of the Local Government Bill. This report is to help stimulate the Committee's discussion.

2. Items for consideration

Promoting and maintaining high standards of conduct

The Bill says that regardless of whether a Council adopts a local Code of Conduct it must promote and maintain high standards of conduct by its Members.

The Committee is asked to consider what this might entail.

Voluntary Code of Conduct

Attached as Annex “A” is the Council’s current Code of Conduct. The Committee is asked to consider what it would want to see in a voluntary code, particularly one that could be adopted by a range of authorities.

Role of Standards Committee

The current main functions of the Committee are as follows:

- (i) to promote and maintain high standards of conduct for Members; and
- (ii) to help Members to follow the Code of Conduct.

The Standards Committee’s specific functions shall be;

- (i) to give the Council advice on adopting a local Code;
- (ii) to monitor the effectiveness of the Code;
- (iii) to train Members on the Code, or arrange for such training;
- (iv) to assess and review complaints about Members;
- (v) to conduct determination hearings;
- (vi) to grant dispensations to Members with prejudicial interests; and
- (vii) to grant exemptions for politically restricted posts.

The Committee is asked to consider what would be the role of a Standards Committee under any new arrangements; what its membership might be; and how might it function across a number of authorities.

Remedies open to a Standards Committee

Upon receipt of each allegation and any accompanying report by the Monitoring Officer, an Assessment Sub-Committee makes an initial assessment of the allegation and then can do one of the following:

- (i) refer the allegation to the Monitoring Officer, with an instruction that they undertake a formal investigation of the allegation, or direct that they arrange training, conciliation or such appropriate alternative steps as permitted by the Regulations;
- (ii) refer the allegation to Standards for England;
- (iii) decide that no action should be taken in respect of the allegation; or
- (iv) where the allegation is in respect of a person who is no longer a Member of the Authority, but is a Member of another relevant Authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant Authority

The Assessment Sub-Committee may decide that no action should be taken in respect of an allegation that a member has failed to comply with the Council’s Code

of Conduct. It has been agreed that in reaching such a decision the Sub-Committee should consider the following questions/criteria:

- a) Is it a complaint against one or more named members of the authority or an authority covered by the standards committee
- b) was the named member in office at the time of the alleged conduct and was the Code of Conduct in force at the time
- c) would the complaint, if proven, be a breach of the Code under which the member was operating at the time of the alleged misconduct
- d) Is the information provided sufficient to make a decision as to whether the complaint should be referred for investigation or another action?
- e) Is the member currently an Essex County Councillor?
- f) Has the matter complained of already been subject to a previous investigation or other action?
- g) Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- h) Is the complaint too trivial to warrant further action?
- i) Does the complaint appear to be malicious, politically motivated or prepared on a tit for tat basis?

Under the full range of the Standards Regime if the standards committee found that a member had failed to follow the Code of Conduct and that they should be sanctioned, it could have imposed any one or a combination of the following:

- censure of that member
- restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions met both the following requirements:
 - they are reasonable and proportionate to the nature of the breach;
 - they do not unduly restrict the person's ability to perform the functions of a member
- partial suspension of that member for a period not exceeding six months
- suspension of that member for a period not exceeding six months
- that the member submits a written apology in a form specified by the standards committee
- that the member undertakes such training as the standards committee specifies
- that the member participates in such conciliation as the standards committee specifies
- partial suspension of that member for a period not exceeding six months or until such time as the member had met either of the following restrictions:
 - they have submitted a written apology in a form specified by the standards committee;
 - they have undertaken such training or has participated in such conciliation as the standards committee specified
- suspension of that member for a period not exceeding six months or until such time as the member had met either of the following restrictions:
 - they have submitted a written apology in a form specified by the standards committee;
 - they have undertaken such training or participated in such conciliation as the standards committee specified.

Under the new arrangements the option of suspension is not available.

The Committee is asked to consider what options might be open to a committee when considering an allegation and what remedies might it be able to use.

DECIDED:

23. MEMBERS CODE OF CONDUCT

23.1 Introduction and Interpretation

This Code applies to **you** as a Member of the Council.

You should read this Code together with the general principles prescribed by the Secretary of State and the Member Handbook.

It is your responsibility to comply with the provisions of this Code.

In this Code—

"meeting" means any meeting of—

- (i) the Council;
- (ii) the Cabinet;
- (iii) any of the Council's or its Council or Cabinet committees, sub-committees, joint committees, joint sub-committees, or area committees; and
- (iv) informal meetings with other Members or with Officers relating to the discharge of the authority's functions.

"Member" includes a co-opted member and an appointed member.

In relation to a parish council, references to a Council Monitoring Officer and a Council's standards committee shall be read, respectively, as references to the Monitoring Officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

23.2 Scope

You must comply with this Code whenever you:

- (i) conduct the business of the Council (which, in this Code, includes the business of the office to which you are elected or appointed); or
- (ii) act, claim to act or give the impression you are acting as a representative of the Council;

and references to your official capacity are construed accordingly.

This Code does not have effect in relation to your conduct other than where it is in your official capacity, except paragraphs 23.3 ((ii)(c), (v) and (vi)(a)) shall also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

Conduct to which this Code applies (whether that is conduct in your official capacity or at any other time) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

Where you act as a representative of the Council:

- (i) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (ii) on any other body, you must, when acting for that other body, comply with your Council's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

23.3 General obligations

- (i) You must treat others with respect.
- (ii) You must not:
 - (a) do anything which may cause the Council to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a Member (including yourself) has failed to comply with his Council's Code of Conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
- (iii) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.
- (iv) You must not:
 - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought to reasonably be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:

- (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
- (v) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or Council into disrepute.
- (vi) You must:
 - (a) 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; and
 - (b) when using or authorising the use by others of the resources of the Council:
 - (i) act in accordance with the Council's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (vii) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
 - (a) the Council's Section 151 Officer; or
 - (b) the Council's Monitoring Officer,

where that officer is acting pursuant to his statutory duties.
- (viii) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.

23.4 Personal interests

You have a personal interest in any business of the Council where either:

- (i) it relates to or is likely to affect:
 - (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
 - (b) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

- of which you are a member or in a position of general control or management;
 - (c) any employment or business carried on by you;
 - (d) any person or body who employs or has appointed you;
 - (e) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (f) any person or body who has a place of business or land in the Council's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (g) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (f);
 - (h) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (i) any land in the Council's area in which you have a beneficial interest;
 - (j) any land where the landlord is the Council and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (f) is, the tenant;
 - (k) any land in the Council's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (ii) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:
- (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (b) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (c) (in all other cases) other council tax payers, ratepayers or inhabitants of the Council's area.

In sub-paragraph (ii) above, a relevant person is:

- (i) a member of your family or any person with whom you have a close association; or
- (ii) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

- (iii) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (iv) any body of a type described in sub-paragraph (i)(a) or (b) above.

23.5 Disclosure of personal interests

- (i) Subject to sub-paragraphs (ii) to (vii) below, where you have a personal interest in any business of the Council and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (ii) Where you have a personal interest in any business of the Council which relates to or is likely to affect a person described in paragraph 25.4 ((i)(a) or (i)(b)(aa)), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (iii) Where you have a personal interest in any business of the Council of the type mentioned in paragraph 25.4 (i)(h), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (iv) Sub-paragraph (i) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (iii) Where you have a personal interest but, by virtue of paragraph 25.10, sensitive information relating to it is not registered in the Council's register of Members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (vi) Subject to paragraph 25.4 (i)(b), where you have a personal interest in any business of the Council and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (vii) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.

23.6 Prejudicial interest generally

Where you have a personal interest in any business of the Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

You do not have a prejudicial interest in any business of the Council where that business:

- (i) does not affect your financial position or the financial position of a person or body described in paragraph 25.4;
- (ii) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 25.4; or
- (iii) relates to the functions of your authority in respect of:
 - (a) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
 - (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (d) an allowance, payment or indemnity given to Members;
 - (e) any ceremonial honour given to Members; and
 - (f) setting council tax or a precept under the Local Government Finance Act 1992.

(i) **Prejudicial interests arising in relation to overview and scrutiny committees**

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:

- (i) that business relates to a decision made (whether implemented or not) or action taken by the Cabinet or the Council's committees, sub-committees, joint committees or joint sub-committees; and
- (ii) at the time the decision was made or action was taken, you were a Member of the Cabinet, the Council's committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (i) and you were present when that decision was made or action was taken.

23.8 Effect of prejudicial interests on participation

Where you have a prejudicial interest in any business of the Council:

- (i) you must withdraw from the room or chamber where a meeting considering the business is being held:

- (a) in a case where sub-paragraph (iv) applies, immediately after making representations, answering questions or giving evidence;
- (b) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from the Council's standards committee;

- (ii) you must not exercise executive functions in relation to that business; and
- (iii) you must not seek improperly to influence a decision about that business.

Where you have a prejudicial interest in any business of the Council, you may attend a meeting (including a meeting of the overview and scrutiny committee of the Council or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

23.9 Registration of Members' Interests

Subject to paragraph 25.10, you must, within 28 days of:

- (i) this Code being adopted or applied to the Council; or
- (ii) your election or appointment to office (where this is later), register in the Council's register of Members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 25.4 (i)(a), by providing written notification to the Council's Monitoring Officer.

Subject to paragraph 25.10, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (ii) above, register details of that new personal interest or change by providing written notification to the Council's Monitoring Officer.

23.10 Sensitive information

Where you consider that the information relating to any of your personal interests is sensitive information, and the Council's Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 25.9.

You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer sensitive information, notify the Council's Monitoring Officer asking that the information be included in the Council's register of Members' interests.

In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.