

SCARBOROUGH BOROUGH COUNCIL

Town Hall
Scarborough
YO11 2HG

Date 18 May 2012

To: All Members that receive Cabinet Agenda

Dear Councillor

Cabinet - Tuesday, 22 May 2012

Please find attached the following report which was not available when the agenda was circulated:

6. Introduction of the New Regime for Standards (Pages 1 - 32)

To consider a report by the Head of Legal and Support Services
(Reference 12/274 attached).

Yours sincerely



Gill Wilkinson
Democratic and Administrative Services Manager

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	REPORT TO CABINET TO BE HELD ON 22 MAY 2012						
Corporate Priority Improving the Council	<table> <tr> <td>Key Decision</td> <td>No</td> </tr> <tr> <td>Forward Plan Ref No</td> <td>N/A</td> </tr> <tr> <td>Cabinet Portfolio Holder</td> <td>Cllr Jane Kenyon</td> </tr> </table>	Key Decision	No	Forward Plan Ref No	N/A	Cabinet Portfolio Holder	Cllr Jane Kenyon
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Forward Plan Ref No	N/A						
Cabinet Portfolio Holder	Cllr Jane Kenyon						

REPORT OF: Head of Legal and Support Services –

WARDS AFFECTED: All

SUBJECT: CHANGES TO THE CODE OF CONDUCT

RECOMMENDATION (S):

That

- (1) Cabinet agree that the draft code of conduct attached to this report as Appendix A is sent out to all parish councils, and borough councillors for consultation prior to referral back to Cabinet and subsequently to full Council.
- (2) Cabinet agree that the proposed protocol for dealing with alleged breaches of the code be sent out to all parishes and borough councillors for consultation
- (3) Cabinet delegate the recruitment of two independent persons to the Standards committee
- (4) Cabinet agree to the role description of the Independent person for use in the recruitment of the independent persons
- (5) Cabinet consult with the parishes on whether to have non-voting members on the revised Standards Committee
- (6) Cabinet consider any further comments of the Council's Standards Committee on the proposed changes to the Council's Standards regime prior to recommending a form of Code of Conduct and Protocol for dealing with alleged breaches of the Code of Conduct to full Council

To ensure good governance for the Council

HIGHLIGHTED RISKS:

1. INTRODUCTION

- 1.1 The Localism Act 2011 (“the Act”) abolishes the current standards regime and makes provision for a new framework, which will come into effect on 1 July 2012. The Council will need to consider the issues raised in this report to ensure that a new ethical framework, compliant with the Act, is in place by that date.
- 1.2 The implications of the Act for the standards regime has been the focus of the Standards Committee’s work programme for some time. The previous Monitoring Officer had developed a code of conduct and protocol for dealing with complaints which was considered by the Standards Committee at their meeting on 25 January 2012. A copy of his report is attached as Appendix B
- 1.3 At that time the Committee resolved that
 - (a) the draft Code of Conduct as amended by the Committee at paragraph 8 to include reference to the Monitoring Officer’s role,
 - (b) the draft Article 9 as amended by the Committee to include call-in provisions and
 - (c) the draft protocol upon member/officer relations go forward for wider consultation with Cabinet and Parish Councils through the YLCA. On 14 February 2012 Cabinet endorsed this course of action.
- 1.4 It became apparent however in later February and March of this year that if Scarborough Borough Council continued with the recommendations agreed by the Standards Committee it would be the only council in North Yorkshire to adopt these particular revisions to the proposed framework. Subsequently, officers from North Yorkshire County Council and the other district councils in North Yorkshire met to discuss new guidance on the Code with a view to liaising and agreeing to adopt a very similar code so that councillors would be covered by similar provisions for each Authority they represented be these Parish, Borough, County or National Park and have similar protocols for dealing with alleged breaches of the code.

2. CORPORATE OBJECTIVES

- 2.1 Adoption of a new code of conduct assists the council in delivering all four of its corporate objectives

3. BACKGROUND AND ISSUES

- 3.1 The Act has removed the requirement for authorities to have statutory standards committees. However authorities may choose to establish a standards committee which would be a committee of the authority rather than a mandatory statutory committee. The usual proportionality and access to information requirements will therefore apply to any new standards committee established. .

3.2 Scarborough Borough Council is also the Principal Authority for the parishes in the borough. The Act states that

A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.

In discharging its duty under subsection (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

A relevant authority that is a parish council—

- (a) may comply with subsection (2) by adopting the code adopted under that subsection by its principal authority, where relevant on the basis that references in that code to its principal authority's register are to its register, and
- (b) may for that purpose assume that its principal authority has complied with section 28(1) and (2).

Thus the parishes can comply with this section of the Localism Act by agreeing to comply with the code of conduct of the Principal Authority

3.3 The Council has responsibility for involving relevant Parish Councils in consultation on the new provisions. Parish Council members would not have any voting rights on the new Standards committee as it is a committee of Scarborough Borough Council. However the Council could choose to co-opt non-voting parish council members onto the Standards committee. It is proposed that as part of the consultation with parishes the composition of the Standards committee is included with the option for parishes to consider being co-opted as non-voting members.

It is envisaged that the Standards Committee would meet at least twice a year to consider how the authority is upholding the seven principles of public life and suggest improvements. Under current proportionality arrangements a committee of nine would consist of five conservative, one labour, one lib dem, two independent and no green councillors.

3.4 The current General Principles of Conduct and national model Members' Code of Conduct (on which the Authority's current Code is based) will be repealed, and Members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Authority will be required to adopt a new Code governing elected and (voting) co-opted members' conduct when acting in that official capacity (not conduct in private life). The new Code must, viewed as a whole, be consistent with the following seven principles:

- Selflessness

- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

and contain such provisions as the Council thinks appropriate in relation to the registration of interests in the Register of Members' Interests and the disclosure of pecuniary and non-pecuniary interests. That apart, the scope and content of the Code is a matter for the Council, although nothing in an authority's code will prejudice the operation of the Act's provisions regarding the registration and disclosure of interests, dispensations and offences.

- 3.5 In relation to interests (and also dispensations), regulations pursuant to the 2011 Act are still awaited. 'Disclosable Pecuniary Interests' ("DPIs") are to be defined in the regulations and will be required to be registered and disclosed. As the relevant definitions are not yet available, it is not yet possible to fully draft new Code provisions covering the new interests regime. Given the timescales involved, some authorities are considering the continuation of the current Code of Conduct until such time as the regulations are forthcoming to enable the final determination of a Code suitable for adoption. It is therefore recommended that the code adopted by North Yorkshire County Council be adopted by Scarborough Borough Council with the understanding that this will be amended when the pecuniary interests have been defined.

Disclosable Pecuniary Interests

- 3.6 The Act prohibits Members with a DPI from participating in Authority business. The Act does not allow Members with such an interest to speak, where a member of the public can (as under the current Code), before ending their participation, however there is a relaxation under the Act's provisions in that there is no requirement on a Member with such an interest to withdraw from the meeting room. However, the Authority can adopt a Standing Order (Council Procedure Rule) requiring Members to withdraw from the meeting room. Should there be no such provision included in Standing Orders, then it would be open to a Member with a DPI (the equivalent of a current prejudicial interest ie a more significant interest) to remain in the meeting room during the discussion and vote and potentially able to influence those Members participating in the discussion and vote. The Standards Committee were recommend to suggest that council adopt such a standing order to ensure a member with a pecuniary interest leaves the room during the discussion and vote on the issue.
- 3.7 The Code must also include the provision the Authority considers appropriate in respect of the registration in its Register of Members' Interests, and disclosure, of pecuniary interests and interests other than pecuniary interests. As mentioned above, further detail on interests will be provided in regulations. Until such time as the regulations are available, the draft new Code attached to this report proposes that the current Code's interests provisions prevail (which covers registration of interests requirements).

- 3.8 Authorities must put in place arrangements for the investigation of allegations of breaches of the Code of Conduct and to decide upon allegations. These arrangements must, as indicated above, involve the appointment of at least one Independent Person. The Council must therefore consider arrangements enabling written allegations of a breach of the Code to be investigated, and under which decisions on allegations can be made. Details of this are attached at appendix C for members to consider.
- 3.9 Under the Act there is no longer a requirement to have Independent Members of the Standards Committee under the new regime, but each authority must appoint at least one "Independent Person". There is no requirement that they should be co-opted on to the Committee: they may simply be called upon to undertake the functions set out in the Act in relation to potential breaches of the Code of Conduct as and when the circumstances arise.
- 3.10 The Independent Person's role is set out at paragraph 8.3 above. As the Independent Person could be involved in more than one role, which could give rise to conflicts of interests, it is recommended that two Independent Persons should be appointed, to be involved on a rota basis. A draft independent person role description is attached as appendix D.
- 3.11 It is further recommended that the recruitment of the independent person be carried out by the Standards Committee with their recommendation to full council on 2 July for adoption.
- 3.12 The current provisions on dispensations are changed by the Localism Act.
- 3.13 At present, a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds:
- (a) That at least half of the Members of a decision-making body have prejudicial interests; or
 - (b) 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.
- 3.14 Under the new provisions, the Authority may, on a written request made to the proper officer of the Authority by a Member, grant him/her a dispensation relieving him/her from either or both of the restrictions upon participation in the discussion and/or participation in the vote only if, after having had regard to all relevant circumstances, the Authority:
- considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - considers that without the dispensation the representation of different political groups on the body transacting any particular business would be

so upset as to alter the likely outcome of any vote relating to the business;

- considers that granting the dispensation is in the interests of persons living in the authority's area;
- considers that without the dispensation each Member of the Authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
- considers that it is otherwise appropriate to grant a dispensation.

The dispensation must specify the period for which it has effect (the maximum period is four years, as now).

3.15 It is recommended that the proper officer for this be the Monitoring officer.

3.16 Currently, the Local Government Act 2000 requires that dispensations be granted by Standards Committee, however the Localism Act provides for dispensations to be granted by the Authority but gives discretion for this power to be delegated. It is recommended that this be delegated to the Standards Committee but there should be the power for this to be further delegated to the Monitoring Officer to grant dispensations where the timescales were such that a Standards Committee meeting could not be convened and where the Monitoring Officer has consulted every available Member of the Standards Committee, all of whom consent to the granting of the dispensation.

4. CONSULTATION

4.1 These proposals have been put forward to the Council's existing Standards Committee for comment. Members of the Standards Committee have asked for more time to consider the proposals and will be putting forward comments to Cabinet (and Council) in due course. However, the time scale for the implementation of the new regime means that if the Council does not start a consultation exercise with the Parishes prior to the final views of the Standards Committee being made known, the statutory timetable for implementation will not be met. A twin track approach to consultation and comment has therefore been adopted.

4.2 If agreed by Cabinet these proposals will be sent to to all Parish Councils, and Borough Councillors for comments.

5. ASSESSMENT

Adoption of the original code of conduct would have meant that Scarborough Borough Council was using a different code and protocol to the rest of the councils in North Yorkshire. Adopting the proposed code which has been agreed by North Yorkshire County Council means that members who are on more than one council will have a similar set of rules to adhere to. Having the

same code also means that training for Parish Councils can be shared if necessary with other districts and reduces duplication.

It is recommended that the proposed code is sent out to all Parish Councils together with the proposed protocol for dealing with breaches of the code. Parish Councils may choose not to comply with Scarborough Borough Council's agreed code but if they do not they will have to demonstrate how they are complying with the legislative requirement to encourage high standards of behaviour among their members.

6. IMPLICATIONS

- 6.1 I have considered whether the following implications arise from this report and am satisfied that there is no identified implication that will arise from this decision

7. ACTION PLAN

- 7.1 Not applicable



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Background Papers:

Booklet on Standards

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Gill Wilkinson ON 01723 232303 e-mail gill.wilkinson@scarborough.gov.uk

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(DRAFT) CODE OF CONDUCT FOR MEMBERS OF SCARBOROUGH BOROUGH COUNCIL

This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of Scarborough Borough Council

The Code has been adopted by the Council and also requires compliance with the general principles of public life set out at the end of the document. The Council has established a Standards Committee, consisting of Members of the Council, to deal with any allegations of breaches of the Code.

1. You must not treat others with disrespect.
2. You must not do anything which may cause the County Council to breach any equality enactment.
3. You must not bully or intimidate any person, or attempt to bully or intimidate them.
4. You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Authority, or do anything that is likely to compromise their impartiality.
5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:
 - You have the permission of a person authorised to give it; or
 - You are required by law to disclose the information; or
 - You disclose it 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
 - The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.
6. You must not prevent another person gaining access to information which that person is entitled to by law.
7. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.
8. You must not use your position as a Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.

9. You must not take part in the scrutiny of any decision you have been involved in making – except that you may provide evidence or opinion to those undertaking any scrutiny process.
10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Councillor, If you do accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at a Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.
11. You must act in accordance with the Council’s guidance or requirements when using the resources of the Council (such as officer time, IT and copying equipment, or physical materials), or when authorising others to use them, and must ensure that those resources are not used improperly for political or other purposes.
12. You must have regard to relevant advice given by the Council’s Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.
13. You must comply with the following section of this Code, which relates to registering and declaring in meetings any personal and prejudicial interests you may have, until new statutory provisions relating to these matters come into force, as set out in Statutory Instruments under the Localism Act 2011. Thereafter you must comply with the requirements of those statutory provisions, until the Council adopts and brings into force a revised Code which satisfies the requirements of the new statutory provisions.

INTERESTS

Personal Interests

14. (1) You have a personal interest in any business of your authority where either:

(a) it relates to or is likely to affect:

(i) 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 your authority;

(ii) 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;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) 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;
 - (vi) any person or body who has a place of business or land in your authority'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);
 - (vii) 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 (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority 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 (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer;
or
- (b) 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—
- (i) (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;

- (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
- (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

- (a) a member of your family or any person with whom you have a close association; or
- (b) 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;
- (c) 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
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of Personal Interests

15. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority 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.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 14(1)(a)(i) or 14(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 14(1)(a)(viii), 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.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 20, sensitive information relating to it is not registered in your authority'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.

(6) Subject to paragraph 18(1)(b), where you have a personal interest in any business of your authority 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.

(7) 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.

Prejudicial Interest Generally

16. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority 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.

(2) You do not have a prejudicial interest in any business of the authority where that business:

(a) does not affect your financial position or the financial position of a person or body described in paragraph 14;

(b) 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 14; or

(c) relates to the functions of your authority in respect of:

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) 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;

(iii) 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;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to
Overview and Scrutiny Committees

17. 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—
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

18. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority:
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority 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.

REGISTRATION OF MEMBERS' INTERESTS

Registration of Members' Interests

19. (1) Subject to paragraph 20, you must, within 28 days of:

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority'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 14(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 20, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive Information

20. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority'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 19.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) 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.

GENERAL PRINCIPLES OF PUBLIC LIFE

Selflessness

1. You should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. You should not place yourself in situations where your honesty and integrity may be questioned; should not behave improperly; and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. You should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. You should be accountable to the public for your actions and the manner in which you carry out your responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to your office.

Openness

5. You should be as open as possible about your actions and those of the County Council, and should be prepared to give reasons for those actions.

Personal Judgment

6. You may take account of the views of others, including your political group, but should reach your own conclusions on the issues before you and act in accordance with those conclusions.

Respect for Others

7. You should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

Stewardship

9. You should do whatever you are able to do, to ensure that the County Council uses its resources prudently and in accordance with the law.

Leadership

10. You should promote and support these principles by leadership, and by example, and should always act in a way that secures or preserves public confidence.

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	REPORT TO STANDARDS COMMITTEE TO BE HELD ON 25 JANUARY 2012
	Key Decision NO Forward Plan Ref No N/A
Corporate Priority Improving the Council	Cabinet Portfolio Holder Cllr Jane Kenyon

REPORT OF: HEAD OF LEGAL AND SUPPORT SERVICES – 1276

WARDS AFFECTED: ALL

SUBJECT: PROPOSAL TO AGREE NEW CODE OF CONDUCT AND REGISTER OF INTERESTS

RECOMMENDATION (S):

That the Committee consider the proposed revisions to:

- (a) the Code of Conduct
- (b) Article 9 of the Constitution, and
- (c) The Protocol upon member/officer relations

and propose to the Cabinet and thereafter Council revisions to the code of conduct for implementation with the agreement of Council.

REASON FOR RECOMMENDATION (S):

1. To bring the Code of Conduct in line with legislative changes that have been introduced by the current government pursuant to the Localism Act
2. To develop an approach in relation to Standards matters based on experience at Scarborough
3. To provide guidance to Parish Councils upon the proposed way forward following the discontinuation of Standards for England to inform consultation with the Parish Councils
4. To provide greater clarity upon the role and remit of Co-opted members of Council

HIGHLIGHTED RISKS:

none

1. INTRODUCTION

- 1.1 The Borough Council Constitution includes the following documents
 - 1.1.1 The Code of Conduct which provides guidance to members upon conduct related to their role as a member of Council
 - 1.1.2 Article 9 which sets out the role and remit of the Standards Committee, and
 - 1.1.3 A protocol providing guidance to members and officers upon their respective roles.
- 1.2 Until this year the Code of Conduct has followed a proscribed form largely determined by a Central Government Agency, Standards for England.
- 1.3 The Government has decided to discontinue Standards for England and allow for decision making in relation to the implementation of Standards to be undertaken locally. Standards for England comes to an end on 31 March 2012 and it is necessary to prepare for a local scheme to replace it.
- 1.4 The Localism Act 2011 provisions through which the changes are implemented are expected to come into force on 1 April. The Act sets out a framework for the implementation of Standards locally, however, leaves ultimate control of much of the detail to Local Authorities.
- 1.5 The Council needs to review its Code of Conduct, Article 9 of the Act and its Member and Officer protocol in readiness for implementation of the changes.
- 1.6 This report proposes changes to these documents for consideration by the Standards Committee as a prelude to proposing the same to the Council's Cabinet and Council.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 This report meets several of the Councils Corporate Aims and priorities as follows:-

Aim 5 : improving the Council

3. BACKGROUND AND ISSUES

- 3.1 The Localism Act requires that a member registers and withdraw from a meeting where they have an interest which is referred to as a "Discloseable

Pecuniary Interest” in the business being considered by the meeting. What a Discloseable Pecuniary Interest is, is subject to determination by the Secretary of State. As yet this has not been determined.

- 3.2 Beyond Discloseable Pecuniary Interests the Council is free to determine what interests they consider need to be registered. The Standards Committee has met as a governance working group to consider whether the existing code should be significantly amended. The views expressed at the meeting indicated that the existing scheme is broadly satisfactory, and at this stage little change to the overarching scheme is warranted. A revised code has been prepared within this context and is appended to this report as Appendix 1.
- 3.3 The revised code accommodates the changes introduced through the Localism Act and identifies that interests that may be prejudicial interests are what the Secretary of State determines from time to time to be Discloseable Pecuniary Interests from time to time.
- 3.4 Under the Act the Standards Committee is required to be comprised of Borough Council members. There is no provision for co-option of independent or parish members. Given this the normal requirements in relation to proportionality apply. As was explained in the report to the Standards Committee meeting in December there is however, a need to recruit an independent person.
- 3.5 The Committee is able to delegate to the Monitoring Officer much of the implementation of Standards processes. However, any decision making in relation to such processes must be undertaken following consultation with an independent person. Revisions to Article 9 of the Constitution are required to accommodate revised processes. Suggested arrangements are included at Appendix 2, a revised form of Article 9 to the Constitution. There will also be a need to make changes to the Scheme of Delegation to the Monitoring officer to reflect these changes.
- 3.6 The Committee sitting as a governance group considered that there would be a need to require that the Monitoring Officer or Independent Person continue to refer some matters to a sub-committee. Provision for this has been included in Article 9 where the Independent Person requires this. The referrals sub-committee has been retained as a reference point, however, the Localism Act includes no provision for a review committee therefore this has been removed.
- 3.7 Sitting as a governance group members considered that there should be a specific hearing sub-committee in future to hear complaints. This has been provided for. Given the absence of a Review Committee it is suggested that the members who sit on the Hearings Committee be different to those who sit on the Referrals sub-committee. It is suggested that the number of members on the Hearings Committee be four so that if one is unable to conduct the hearing there will remain three members on the Committee that hears the case, a quorum of three is therefore proposed. It is suggested that three

members are appointed to the referrals sub-committee and a quorum of two is set for this committee.

- 3.8 If these recommendations are accepted the committee size will need to be a minimum of seven members. Therefore this number is referred to in Article 9.
- 3.9 The Committee also considered that it should be made clear to a member who is the subject of an investigation, from where they may gain advice upon the process. Provision for this in relation to the complainant and the member has been included in Article 9.
- 3.10 The Committee are also required to make arrangements for publication of decision notices. Provision for this has been included in Article 9 including explicit reference to the ability of a member against whom no adverse finding is made to veto publication of a decision notice relating to them, given the potential for damage to the reputation of the member.
- 3.11 The Committee proposed that a procedure be adopted that allowed for a matter to be referred back to the Referrals Sub-committee in the event that a member did not cooperate with alternate action. This has been included in Article 9.
- 3.12 As there are no specific sanctions provided to Standards Committees within the Localism Act, in the revised Code a paragraph (8) has also been included making a commitment on the part of members to follow recommendations made by the Standards Committee. This expectation has been carried through into a revised Member/Officer protocol.
- 3.13 The Whitby Harbour Board recently had cause to review the Member/Officer protocol to improve the guidance in the protocol for Co-opted members. As co-opted members have not come forward through their communities to sit as members of the Council, they therefore lack a democratic mandate. They however, bring particular skills which the Council believes can add value to its decision making.
- 3.14 The absence of a democratic mandate means that co-opted members do not act as community leaders speaking on behalf of the public in a Council ward, or Executive members. They have no individual powers or authority, and can only act in concert with fellow members through the Committee.
- 3.15 Having members on a Committee with differing standing requires clarity upon the protocols that relate to member's individual roles. The existing code did not provide that clarity. A revised code is appended to this report as Appendix 3 which seeks to address this as well as addressing the issues identified in paragraph 3.12

4. CONSULTATION

- 4.1 The member officer protocol has been considered by the Whitby Harbour Board, and the proposals within this report arise from meetings of the

Standards Committee sitting as a Governance Group. This report to Standards Committee is however, the beginning of a process to adopt a new code of conduct and form a new Standards Committee for the Borough Council.

- 4.2 Parish Councils will need to be consulted upon the documents, and the documents will be revised in the light of comments made by the Standards Committee and the wider membership of Council before progressing to Cabinet for consideration before ultimately going to full Council.

5. ASSESSMENT

- 5.1 The review of the Code of Conduct, Article 9 of the Constitution and the Member/Officer protocol arises from the introduction of the Localism Act.
- 5.2 The amendments to these documents are presently put forward in the absence of a definition of Disclosable Pecuniary Interests from the Secretary of State. It is quite likely that refinements to the documents will be required when further information is available.
- 5.3 At present however, the approach in this report has been to make limited amendments to the current code of conduct with which members are familiar and have been found largely to be effective. It is anticipated that this will allow for a level of consistency of approach across the country in relation to Standards. It is expected that guidance will be developed by the Standards Committee over time informed by local practice, and it may be that the Code will be amended, however, at this point it is considered too early to introduce significant change.
- 5.4 Refinements have however, been made to the procedural arrangements building upon the knowledge that the Standards Committee have developed. These refinements should assist the Committee to respond to situations where a member fails to comply with a direction from the Committee, however, there will be a need for the wider membership of Council and Parish Councils to support the Committee's work and re-inforce decisions of the Committee.
- 5.5 The Standards Committee of the Borough will still act as the Standards Committee for Parish Councils within the Borough and the Monitoring Officer remains the Monitoring Officer for the Parish Councils. Parish Councils are able to adopt the Borough Council code of conduct, and early development of the code and consultation with Parish Councils will facilitate that process.
- 5.6 The views of members are consequently sought upon these initial draft documents to inform their development.

6. IMPLICATIONS

(a) Policy Implications

6.1 Any changes to documents that form part of the Constitution require the approval of Full Council.

(b) Legal Implications

6.2 The legal implications have been addressed within the body of the report.

(c) Financial Implications

6.3 There are no direct financial implications arising from this report.



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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT IAN ANDERSON ON 01723 232348 OR E-MAIL ian.anderson@scarborough.gov.uk

Scarborough Borough Council

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACH OF THE MEMBERS' CODE OF CONDUCT

These arrangements set out how a complaint can be made to the Scarborough Borough Council (the "Authority") that an elected or voting co-opted Member has failed to comply with the Council's Code of Conduct for Members. These arrangements will also apply to all parish councils that adopt the Authority's code of conduct. The arrangements also set out how such a complaint will be dealt with by the Authority. The arrangements are made under Sections 28(6) and (7) Localism Act 2011.

1 Independent Person

The Authority has appointed an Independent Person whose views must be sought by the Authority before it takes any decision on an allegation which has been decided should be investigated. The Independent Person's views can also be sought by the Authority at any other stage or by a Member against whom an allegation has been made. In practice complaints are dealt with by the Monitoring Officer, and by the Finance Risk, Audit and Standards Committee (the "Committee").

2 Members' Code of Conduct

The Authority has adopted a Code of Conduct for Members, attached as an Appendix to these arrangements. It is also published on the Authority's website.

3 Making a Complaint

If someone considers there has been a breach of the Code of Conduct by a Member, and wants to make a complaint, they should write or send an email to the Authority's Monitoring Officer:

Lisa Dixon
Head of Legal and Support Services
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

email: lisa.dixon@scarborough.gov.uk

Where possible, the standard complaint form should be used. It can be downloaded from the Authority's website, or is available from the Monitoring Officer at the above address.

It is important to provide a name and contact address. Please note that the Authority will not investigate anonymous complaints unless there is a significant public interest in doing so.

4 Assessment for Investigation or Other Action

Every complaint relating to the Code of Conduct will be received by the Monitoring Officer.

The Member who is the subject of a complaint ('the Subject Member') will be advised of the complaint and copied into any correspondence or complaint form received from the Complainant. The Monitoring Officer will review complaints and consult with the Independent Person in doing so, and will decide whether a complaint merits formal investigation.

The Monitoring Officer may request more information to assist the decision as to whether investigation is appropriate.

The Subject Member may also be requested to provide information about the matter.

The Monitoring Officer will advise the complainant and the subject member in writing, of her decision about whether or not the matter should be investigated.

If the complaint identifies criminal conduct or breach of other regulation, the Monitoring Officer will consult the Police and/or such other regulatory agencies as she considers appropriate.

The Monitoring Officer will not refer for investigation matters which are, in her opinion, and after consultation with the Independent Person, vexatious, offensive, trivial or politically motivated.

If the Monitoring Officer has a conflict of interest or does not for any other reason consider it appropriate that she undertakes initial assessment of a complaint, it will be referred to the Committee.

6 Informal Resolution

Wherever possible the Monitoring Officer will seek to resolve a complaint informally without the need for formal investigation or referral to the Committee.

This may involve trying to mediate between the parties, aiming to clarify misunderstandings, or encouraging discussion between the Complainant and Subject Member to enable a resolution between them, or where appropriate, an apology. It may also involve other remedial action by the Authority.

If the Member or the Authority make a reasonable offer of local resolution but the Complainant is not willing to accept the offer, the Monitoring Officer will take this into account in deciding whether a complaint merits formal investigation.

7 Investigation

If the Monitoring Officer concludes that a matter merits investigation, the Complainant will be invited to submit all information they wish to submit in support of their allegation within 5 working days of receiving the request.

Once the information is received it will be sent to the Subject Member, who would also be invited to submit all information they wish to be considered in response within 5 working days.

Throughout the process the Monitoring Officer will ensure the Subject Member and Complainant receive appropriate support and assistance.

The Monitoring Officer may also appoint a member of her staff to oversee the gathering of information relating to the matter which will comprise the investigation ('the Nominated Officer'). The Nominated Officer will consider whether any further information is needed and take steps so far as possible to secure its production.

A report containing the information provided by the Complainant and Subject Member will be prepared by the Nominated Officer, and copied to both parties and sent to the Monitoring Officer. The report will conclude with a recommendation as to whether it is considered that there has been a breach of the Code.

8 Conclusion of no evidence of failure to comply with the Code of Conduct

The Monitoring Officer will receive and review the report and if satisfied that the report is sufficient, the Monitoring Officer will write to the Complainant and the subject Member notifying them that she is satisfied that no further action is required.

9 Conclusion that there is evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the report and consult the Independent Person as to whether local resolution may be possible. If any suggested resolution is not agreed, the matter will be referred to the Committee for consideration.

If the matter can reasonably be resolved in the Monitoring Officer's opinion without the need for a hearing she will consult the Independent Person, with the Complainant and Subject Member, to seek to agree a fair resolution which will also ensure higher standards of conduct for the future.

As with initial assessment this can include the Subject Member accepting that conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Subject Member complies with the suggested resolution the matter will be reported to the Committee but no further action will be taken.

10 Hearing

If local resolution is not appropriate, or the Complainant or Subject Member are not satisfied with the proposed resolution, or the Subject Member is not prepared to undertake any proposed remedial action, the report will be reported to a Hearings Panel ('the Panel') of 3 Members from the Committee. The Independent Person will attend all Panel meetings and will be consulted by the Panel in making its decision about whether there has been a breach of the Code and any action to be taken.

The Panel will meet to decide whether the Member has failed to comply with the Code of Conduct, and if so, whether to take any action.

The report will be presented to the Panel. The Complainant and the Subject Member will be invited to attend the Panel to present information and make representations in relation to the allegations that there has been a failure to comply with the Code of Conduct. The Independent Person will be present. The Panel can proceed in the absence of either the Subject Member or the Complainant where it deems this to be appropriate.

The Panel shall consult with the Independent Person and be advised by the Monitoring Officer. It may conclude:

- (a) that the Member did not fail to comply with the Code of Conduct;
- (b) that the Member did fail to comply with the Code of Conduct, and if so, the Panel may determine whether any action is necessary.

The Subject Member will have an opportunity at this stage to make representations to the Panel and consult with the Independent Person. The Panel will then decide what action to take.

11 What action can the Panel take if there has been a breach of the Code of Conduct?

The Panel may:

- (a) issue a letter of censure to the Subject Member and where appropriate require an apology to be given to the Complainant;
- (b) recommend to the Subject Member's Group Leader that he/she be removed from any or all committees or sub-committees of the Authority;
- (c) instruct the Monitoring Officer to arrange training for the Subject Member.

The Panel has no power to suspend or disqualify the Subject Member or to withdraw allowances.

12 What happens at the end of the hearing?

The Chair of the Panel will announce the decision of the Panel as to whether the Subject Member has failed to comply with the Code of Conduct and as to any action it deems necessary. The Monitoring Officer will prepare a Decision Notice which will be given to the Subject Member and the Complainant within 5 working days. The outcome will be reported to the next meeting of the Committee.

13 Revision of these arrangements

The Authority may by resolution agree to amend these arrangements and delegates to the Chair of the Panel the right to depart from these arrangements where he/she considers it expedient to do so to secure the effective and fair consideration of any matter.

14 Appeals

There is no right of appeal for the Complainant or the Subject Member against a decision of the Monitoring Officer or Panel.

If the Complainant feels that the Authority has failed to deal with the complaint properly they may make a complaint to the Local Government Ombudsman.

1 July 2012

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APPENDIX D

Scarborough Borough Council – APPOINTMENT OF TWO “INDEPENDENT PERSONS”

Scarborough Borough Council is seeking to appoint two people to assist in maintaining and promoting the high ethical standards of the Council. The role of “independent person” has been created under the Localism Act 2011, which requires the Council, as with other local authorities, to adopt a code of conduct for its elected members and to appoint at least one independent person whose views are to be sought, and taken into account, by the Council before it makes its decision on any allegation of a breach of the code of conduct which it had decided to investigate. The Council may also seek the views of the independent person in relation to allegations where no decision to investigate has been made and any County Councillor, or co-opted member of the Council, who is the subject of an allegation may also seek the views of the independent person.

Because the independent person may be called upon to carry out more than one role in respect of any allegation made, and to provide for continuity when a particular independent person may be unavailable, the Council wishes to appoint two people to this role.

No specific qualifications or experience are essential and training will be provided, as required, but analytic and questioning/investigative skills and some understanding of the roles of elected representatives would be helpful. Applicants must not, however, currently be, or have been in the last five years, an elected member or co-opted member of Scarborough Borough Council, or be a relative or close friend of any person who is or has been an elected member or co-opted member of Scarborough Borough Council in the last five years.

When the Council’s Monitoring Officer receives a written allegation of a breach of the Council’s code of conduct, she will decide whether the matter merits formal investigation or should be dealt with in some other way. If she considers it appropriate she will consult the independent person(s) at that stage, before deciding how to proceed and may consult the independent person at other stages of any subsequent process. The Monitoring Officer, or the Council’s Standards Committee, may also seek the views of the independent person(s) on other matters related to the ethical standards of the Council, such as its code of conduct or its procedures for dealing with allegations of misconduct by Councillors.

It is anticipated that the views of the independent person(s) will usually be sought by the Monitoring Officer by e-mail but, on occasions, contact may be by telephone and an independent person is likely to be asked to attend any meeting of the Standards Committee which is considering an allegation of a breach of the code of conduct. As indicated above, the independent person may also be consulted by a Councillor who is alleged to have breached the code of conduct. Such consultations may arise at any stage of the process and may be by telephone; e-mail; letter; or meeting in person.

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