
REPORT OF THE INTERIM MONITORING OFFICER

MEMBERS' CODE OF CONDUCT – MINOR AMENDMENTS TO CODE AND ETHICAL FRAMEWORK

Purpose of the Report

1. To inform Members of minor amendments to the Model Code of Conduct and other aspects of the ethical framework introduced by new legislation; and to recommend corresponding revisions to the Council's Members' Code of Conduct.

Background

2. The Local Government Act 2000, Part III (and regulations made thereunder) sets an ethical framework for the conduct of local government members. A key component of the ethical framework is the statutory Model Code of Conduct (issued under the Local Authorities (Model Code of Conduct) (Wales) Order 2008). The Council adopted the statutory Model Code in May 2008, as the Members' Code of Conduct.
3. In the 2012 White Paper, 'Promoting Local Democracy', the Welsh Government indicated its view that the current ethical framework provides an appropriate balance between guiding Members on the standards of conduct expected of them, and giving reassurance to the public that misconduct will be dealt with consistently and appropriately. However, the White Paper also set out a number of proposals for improving the operation of the ethical framework, some of which were introduced in the Local Government (Democracy)(Wales) Act 2013 ('the 2013 Act').

Issues

4. New subordinate legislation has now been introduced which is intended to support the proposed improvements to the ethical framework set out in the 2012 White Paper and introduced in the 2013 Act. The new legislation comprises of two new statutory instruments: the Local Authorities (Model Code of Conduct)(Wales)(Amendment) Order 2016 and the Local Government (Standards Committees, Investigations,

Dispensations and Referral)(Wales)(Amendment) Regulations 2016, both of which came into force on 1st April 2016.

5. The new legislation makes largely technical and consequential changes to the Model Code of Conduct and other subordinate legislation, intended to clarify certain issues and provide consistency with changes introduced by the 2013 Act.

Changes to the Model Code of Conduct

6. The effect of the changes made to the Model Code of Conduct is shown in **Appendix A** to this report.
7. The key changes to the current Model Code, which are of relevance to Members of County Councils, are as follows:
 - a) Register of Interests - The requirements for registering personal interests are clarified, to require that any personal interest disclosed for the first time must be entered in the Members' register of interests. Currently, Cardiff Councillors complete an annual Register of Interests form which is published on the Council website (and must be updated within 28 days of any changes) and declare personal interests as they arise at meetings which are recorded in the minutes. In order to comply with the revised Model Code, the personal interest forms of interests declared at meetings will need to be published on the Council website as part of the Register of Interests.
 - b) Reporting a breach - The obligation on a Member to report a potential breach of the Code to the Ombudsman is removed, in recognition and support of the operation of local complaints protocols. However, this does not prevent a member from quite properly reporting a potentially serious breach of the Code to the Ombudsman. The requirement to report a breach to the Monitoring Officer is retained.
 - c) Ward interests - The personal interests provision regarding perceived conflict between a Member's ward role and decisions taken on behalf of the Authority (paragraph 10(2)(b) of the Code) is removed. This is to overcome unintended difficulties, where this provision has been interpreted as potentially precluding Members from participating in any decisions affecting their ward. Members are, however, reminded that when participating in decisions relating to their ward, they must be mindful of the general obligation to act objectively and in the wider public interest (pursuant to paragraph 8 of the Code).
8. The Council is required to consider the amendments to the Model Code and approve revisions to its Code of Conduct within 6 months from the date on which the 2016 Order was made. The 2016 Order was made on 27th January 2016, which means that amendments to the Members' Code of Conduct must be approved by the Council by no later than 26th July 2016.

9. Members should note that the provisions of the Model Code are mandatory for all Councils to adopt, although it is possible for additions to be inserted locally which go beyond the statutory requirements. None of the mandatory provisions of the Model Code can be excluded.
10. The Standards and Ethics Committee considered the changes to the Model Code at its meeting in March 2016, and its recommendation to Council is to amend the Members' Code of Conduct to reflect the revised Model Code.
11. The Council is required to publicise any changes to its Code of Conduct by way of newspaper notices and any other means considered appropriate, to make copies of the amended Code available for public inspection and to send a copy to the Public Services Ombudsman for Wales (in accordance with the provisions of section 51(6) of the Local Government Act 2000).
12. Members should also note that the undertaking to comply with the Code of Conduct which all Members will have given in their Declaration of Acceptance of Office (under section 83(1) of the Local Government Act 1972), applies to the Code of Conduct 'for the time being, as may be revised from time to time'. (A fresh undertaking to comply with the Code is only required when an authority adopts a code of conduct for the first time – pursuant to section 52(1) of the Local Government Act 2000).

Other changes to the ethical framework

13. A number of other minor and consequential changes have been made to the ethical framework, in particular concerning the operation of Standards Committees and Monitoring Officers' functions. The changes are set out in the report to the Standards and Ethics Committee dated 22nd March 2016, appended as **Appendix B** to this report (specifically, paragraph 9 of that report).
14. Amongst the other changes is a removal of the current four year restriction on the term of office for local authority and community council members of a standards committee, to reflect the postponement of the 2016 local government elections. Under the new provisions, the term of office of local authority and community council members may continue up until the next ordinary elections following the member's appointment. The current Community Council representative on the Standards and Ethics committee has confirmed he is content to remain as a Committee member until the 2017 Local Government elections.
15. However, Article 9 of the Council's Constitution, which reflects the statutory provisions regarding Standards Committee members' terms of office, needs to be amended to reflect the removal of the four year restriction. Council is recommended to authorise the Monitoring Officer to make the necessary Constitution amendments.

Legal Implications

16. These are set out in the body of the report.

Financial Implications

17. There are none arising directly from this report.

Recommendations

Council is recommended to:

1. note the amendments made to the Model Code of Conduct and other aspects of the statutory ethical framework, as set out in the report;
2. approve the amendment of the Members' Code of Conduct, in accordance with the revised Model Code, as set out in **Appendix A**; and
3. delegate authority to the Interim Monitoring Officer to:
 - (i) publicise the changes to the Members' Code of Conduct, as required by law (and set out in paragraph 11 of the report); and
 - (ii) make the necessary amendments to Article 9 of the Constitution ('Standards and Ethics Committee), as set out in paragraph 15 of the report.

David Marr
Interim Monitoring Officer
20 May 2016

APPENDICES

Appendix A Amended Model Code of Conduct
Appendix B Standards and Ethics Committee report, 22nd March 2016, 'Minor Amendments to Members' Code of Conduct and Ethical Framework'

Background papers

Council report, 'The Local Authorities (Model Code of Conduct)(Wales) Order 2008 – New Code of Conduct', 15 May 2008; and minutes thereof

Standards and Ethics Committee report 'New Statutory Instruments on the Ethical Framework - Welsh Government Consultation', 15 December 2015

Welsh Government's letter dated 2nd March 2016 'Local Government Ethical Framework', informing Authorities about the new legislation

Welsh Government Consultation Document, 'Local Government Act 2000 – Part III, Conduct of Local Government Members, Amendments to Subordinate Legislation, 30 November 2015