

## **Supplementary Reports**

**HAVANT BOROUGH COUNCIL  
GOVERNANCE & AUDIT COMMITTEE  
8 March 2017**

Please find the attached reports which will be considered at next meeting of the Governance & Audit Committee to be held on 8 March 2017.

### **Agenda No    Item**

**10        Changes to the Councillor Code of Conduct**

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**NON EXEMPT**

## **HAVANT BOROUGH COUNCIL**

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**Governance & Audit Committee**

**8<sup>th</sup> MARCH 2017**

### **CHANGES TO THE COUNCILLORS' CODE OF CONDUCT** **Monitoring Officer**

#### **FOR RECOMMENDATION TO COUNCIL**

**Cabinet Lead: Cllr M Wilson**

**Key Decision: No**

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#### **1.0 Purpose of Report**

- 1.1** To consult with the Governance & Audit Committee on changes to the Council's Code of Conduct for Councillors.

#### **2.0 Recommendation**

That the Committee recommends to Council changes to the Council's Code of Conduct for Councillors.

#### **3.0 Summary**

- 3.1** The current Code of Conduct for Councillors was adopted by the Council on the 25 July 2012 following the bringing into force of the Localism Act 2011. The Localism Act 2011 allowed every Council to decide on the form and content of their own Code of Conduct. It also removed sanctions previously available to the Council for Councillors found to have breached the Code.
- 3.2** The Monitoring Officer has dealt with 11 complaints about the conduct of Borough Councillors since July 2012 . The proposed changes reflect lessons learnt over that period of time.

#### **4.0 Subject of Report**

- 4.1** Complaints about the conduct of Councillors since 2012 have mostly fallen in one of three categories:
- complaints relating to social media
  - complaints relating to contents of e-mail

- complaints relating to Councillor's verbal communication in meetings.

4.2 Having considered the nature of many of the complaints it is considered that changes to the code of conduct for Councillors are needed in order to help concentrate Councillors' minds on the live issues which have led to such complaints being made. In summary, the following changes have been made:

- More explanation is given as to when the Code applies
- An explanation is given as to relevance of the law on 'bias'
- More examples are given in relation to obligations of Councillors when carrying out their day-to-day business
- Reference is made to the need to be particularly careful when using social media and when sending e-mails

## **5.0 Implications**

### **5.1 Resources:**

None

### **5.2 Legal:**

Every Council has the power to draft their own Code of Conduct for Councillors as they think fit.

### **5.3 Communications:**

The new Code will be communicated widely and further training undertaken.

Appendices: **Draft new Code of Conduct for Councillors**

Agreed and signed off by:

Legal Services: 28<sup>th</sup> February 2017

Executive Director (Strategy and Governance): 28<sup>th</sup> February 2017

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## Havant Borough Council Code of Conduct for Councillors

1. The Havant Borough Council (“the Council”) has adopted the following code (“the code”) dealing with the conduct that is expected of Councillors and co-opted<sup>1</sup> members of the Council (‘Co-opted Members’) when they are acting in that capacity as required by section 27 of the Localism Act 2011 (‘the Act’).
2. The Council has a statutory duty under the Act to promote and maintain high standards of conduct by Councillors and Co-opted Members and the Code sets out the standards that the Council expects them to observe.
3. The Code is not intended to be an exhaustive list of all the obligations that are placed on Councillors and Co-opted Members . It is the responsibility of individual Councillors and Co-opted Members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to five years.
4. The Code is intended to be consistent with the seven principles as attached to this Code and applies whenever a person is acting in his/her capacity as a Councillor or Co-opted Member in the conduct of the Council’s business or acting as a representative of the Council or when giving the impression that they are acting as a representative of the Council.
5. This Code of Conduct applies to you whenever you are acting in your capacity as a Councillor or Co-opted Members of Havant Borough Council<sup>2</sup>, including:
  - (i) at formal meetings of the Council, its Committees and Sub-Committees, Cabinet and Cabinet Panels.
  - (ii) when acting as a representative of the Council.
  - (iii) in taking any decision as a Cabinet Member.

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<sup>1</sup> A “co-opted member” for the purposes of this code is, as defined in the Localism Act 2011 Section 27 (4) “ a person who is not a member of the council but who

- a) is a member of any committee or sub-committee of the council; or
- b) is a member of, and represents the council on, any joint committee or joint sub-committee of the council; and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

<sup>2</sup> In the case of [Livingstone v Adjudication Panel for England](#), the court found that The Code covers misconduct in a councillor's official capacity or if a member otherwise 'misuses his position as a member'. However, there does need to be a link with the member's membership of the Council.

- (iv) in discharging your functions as a Ward Councillor.
  - (v) at briefing meetings with Council employees.
  - (vi) at site visits. and
  - (vii) when corresponding with the Council other than in a private capacity.
6. Failure to comply with the requirements of paragraph 9–12 of this Code constitutes a criminal offence for which you may be prosecuted. Failure to comply with any of the other sections of the Code may result in censure of you by the Council.
7. Common law developed by the courts indicated that, at least in relation to “quasi-judicial” functions such as Planning, Councillors and Co-opted Members should not participate if a reasonable member of the public who is neither complacent nor unduly sensitive or suspicious would in the circumstances conclude that there is a real possibility of bias by a Councillor or Co-opted Members. This Code requires Councillors and Co-opted Members to excuse themselves from involvement in decision making where they have a “Disclosable Pecuniary Interest” in the matter under consideration. However, it is possible that when exercising their powers in, for example, planning, other interests could lead a reasonable member of the public to conclude that there was a real possibility of bias on the part of the Councillor or Co-opted Member. In such circumstances they should not participate in the decision-making process (i.e. they should not vote nor, unless they are requested by the Chairman of the Committee on a point of clarification, speak on the matter). In cases of doubt or difficulty, advice should be sought from the Monitoring Officer.

## **8. General obligations of Councillors and Co-opted Members**

As a Councillor or Co-opted Member, your conduct will address the principles of the Code of Conduct by:

- (i) Representing the needs of residents, and putting their interests first.
- (ii) Dealing timely (and in case, within 28 days) with representations or enquiries from residents, members of communities, within the administrative area of Havant Borough Council and visitors fairly, appropriately and impartially.
- (iii) Not allowing other pressures (such as personal friendship etc and including the financial interests of yourself or others connected to you) to deter you from pursuing constituents’ casework, the interests of the Council’s area, or the good governance of the Council in a proper manner.

- (iv) Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties.
- (v) Listening to the interests of all parties, including relevant advice from statutory and other professional officers of the Council, taking all relevant information into consideration, remaining objective and making decisions on merit.
- (vi) Being accountable for your decisions and co-operating when scrutinised internally and externally.
- (vii) Contributing to making the Council's decision-making processes as open and transparent as possible.
- (viii) Restricting access to information when the wider public interest, the Council's Constitution, or the law requires it.
- (ix) Behaving in accordance with all the Council's legal obligations, alongside any requirements contained in the Council's policies, protocols and procedures relating to conduct.
- (x) Not bullying<sup>3</sup> any person.
- (xi) Ensuring that when using or authorising the use by others of the resources of the Council that such resources are not used improperly or for political purposes.
- (xii) Having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or otherwise.
- (xiii) Not knowingly doing anything which might cause the Council to breach any legislation.
- (xiv) Valuing your colleagues and Officers of the Council and engaging with them in a respectful and courteous manner.
- (xv) Always treating all people and organisations with respect and propriety.
- (xvi) Providing leadership through behaving in accordance with these principles.
- (xvii) Being careful not to bring your role as a Councillor into disrepute with the use of your language when using social media by, for example posting inappropriate messages.

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<sup>3</sup> Bullying is defined as offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying.

(xviii) Being careful with the use of your language when using social media in your personal capacity as it may conflict with your role as a Councillor and impact on your reputation in the Council.

(xix) When engaging in the use of e-mail be careful not to disclose information not intended to reach others or those who do not need to see the information.

## **REGISTERING AND DECLARING INTERESTS**

9. You must within 28 days of taking office as a Councillor or Co-opted member, notify the Council's Monitoring Officer of the disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of someone with whom you are living with as a husband or wife, or as if you were civil partners.
10. You must disclose the interest at any meeting of the Council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'<sup>4</sup>.
11. Following any disclosure of an interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
12. Unless dispensation has been granted, you must not participate in any discussion of, or vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.

This Code is based on and consistent with the following seven principles.

### **SELFLESSNESS**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits.

### **INTEGRITY**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **OBJECTIVITY**

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<sup>4</sup> A "sensitive interest" is described in the Localism Act 2011 as a member or co-opted member of a council having an interest, and the nature of the interest being such that the member or co-opted member, and the council's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **ACCOUNTABILITY**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **OPENESS**

Holders of public office should be as open as possible about the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **HONESTY**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **LEADERSHIP**

Holders of public office should promote and support these principles by leadership and example.

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