

STANDARDS COMMITTEE

Localism Act 2011 – Implementation of the Amended Standards Regime 19th January 2012

Report of the Monitoring Officer

PURPOSE OF REPORT

To advise the Committee of the changes to the standards regime introduced by the Localism Act 2011 and to enable the Committee to make recommendations to Council on the implementation of the new regime.

This report is public

RECOMMENDATIONS

- (1) **That the Committee consider making recommendations to Council on the implementation of the new standards regime as set out in the report**

1.0 Introduction

- 1.1 Whilst retaining a requirement for the Council to promote and maintain high standards of conduct for its elected and co-opted members, the Localism Act 2011 (the Act) makes fundamental changes to the system of regulation of standards of conduct for members. It was initially thought that the date for implementation of the changes would be the 1st April 2012. However, the government has indicated that, whilst it is intended that Standards for England will cease its regulatory functions on 31 January 2012, and be abolished no later than 31 March 2012, the rest of the changes will be implemented from the 1st July 2012. This will still depend on when certain Orders and Regulations are made by the Secretary of State.
- 1.2 The Act repeals the statutory regime established under the Local Government Act 2000 (the 2000 Act). The national regulatory body Standards for England is abolished, and the statutory provisions relating to the appointment of independent and parish members to standards committees are repealed. However, there will be a requirement to appoint an “independent person” to advise the Council. The national model code of conduct is also repealed, although councils are still required to have a code of conduct. Regulations are to be made by the Secretary of State in respect of “disclosable pecuniary interests”.
- 1.3 The changes are set out in more detail below, together with suggestions as to the mechanisms and procedures that the Council will need to have in place in order to comply with the requirements of the Act.
- 1.4 The Terms of Reference of this Committee currently include the promotion and maintenance of high standards of conduct, and advising the Council on

the adoption or revision of its Code of Conduct, and it is therefore appropriate that this Committee should make recommendations to Council as to the future regime.

2.0 Proposal Details

Standards Committee

- 2.1 The current Standards Committee is a statutory committee. Under the Act there will be no requirement for the Council to have a standards committee. However, there will still be a need to deal with standards issues and case-work, so it may be desirable for the Council to continue to have a Standards Committee, as indeed it had prior to the 2000 Act.
- 2.2 As it will be a normal committee of Council, rather than a statutory committee, membership of the Standards Committee will be governed by proportionality, and the present restriction to only one member of Cabinet will cease to apply. Council will need to consider the size of the Committee. Whilst a smaller Committee may make decision making easier, a larger Committee would make it easier to establish Sub-Committees to deal with matters such as hearings and dispensations.
- 2.3 The current independent members will cease to hold office. The Act establishes a new category of Independent Person, referred to later in this report, who must/may be consulted at various stages. However, the Act provides that the existing co-opted independent members cannot serve as Independent Persons for five years. The new Independent Person(s) may be invited to attend meetings of the Standards Committee, but will not be a co-opted member.
- 2.4 The Council will continue to have responsibility for dealing with standards complaints against parish councillors, but the current parish representatives on the Standards Committee will cease to hold office. It would be possible for the Council to co-opt parish members onto the Standards Committee, but such members would have an advisory role only, and would not have voting rights. It might therefore be difficult to appoint co-optees if they felt that they could not play a part in any decision making. Another option that Council might wish to consider would be to establish the Standards Committee as a Joint Committee with as many parish councils as wished to participate, so that parish representatives could be voting members and the Committee could make operative decisions in respect of parish council members. This, however, is perhaps an option for the future, as it would take some time to establish.

The Committee may wish to make recommendations to Council as to the appropriate size for the Standards Committee and whether parish councils should be invited to nominate co-opted non-voting members, and, if so, how many.

The Code of Conduct

- 2.5 The current ten general Principles and the Model Code of Conduct will be repealed, and members will no longer be required to give an undertaking to comply with the Code of Conduct. However, the Council must adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. The Council's new Code of Conduct must be consistent with the following seven principles:

- Selflessness

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

This means that the principles of personal judgement, respect for others, duty to uphold the law, and stewardship are no longer required to be taken into account.

- 2.6 As a starting point, and to ensure that there is a Code of Conduct in place when the Act takes effect, it might be appropriate for Council to consider re-adopting some or all of paragraphs 3 to 7 of the existing Code of Conduct. The Code could be further amended in due course if that were felt appropriate. Indeed, it may be that bodies such as the Local Government Association or the Association of Council Secretaries and Solicitors will be preparing model codes of conduct that comply with the Act. There may also need to be discussions with the County Council and the parish councils, as it would seem sensible, particularly for the sake of dual and triple hatted members, and for the public generally, for there to be some consistency between the codes of different councils within the same area.
- 2.7 The Code must also include such provisions as the Council considers appropriate in respect of the registration and disclosure of pecuniary interests, and interests other than pecuniary interests. In addition, Regulations are to be made in respect of “disclosable pecuniary interests,” and the Act requires members with a disclosable pecuniary interest not to take part in any relevant item of business. However, there is no longer a requirement to withdraw from the meeting, although that could be included in the Council Procedure Rules. Until the Regulations are drafted, it is not possible to draft Code provisions relating to interests, but this Committee might wish to take a view as to what it might recommend Council would be appropriate to include in the Code in respect of the totality of all interests. It may be that the Committee is of the view that all personal interests which are currently required to be registered should continue to be so, or that some amendment is needed.

The Committee may wish to make recommendations to Council that the Council’s Code of Conduct should comprise some or all of paragraphs 3-7 of the existing Code, and (subject to the contents of the Regulations) should require registration and disclosure of interests which would currently constitute personal and/or prejudicial interests.

Dealing with Misconduct Complaints

- 2.8 The Act requires the Council to adopt “arrangements” for dealing with complaints of breach of the Code of Conduct both by City and parish councillors. The “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the Code.
- 2.9 In the absence of the statutory regime of the 2000 Act, it will be necessary for Council to delegate appropriate powers to the Standards Committee and/or

the Monitoring Officer to deal with complaints.

- 2.10 The Committee may wish to recommend Council to delegate to the Monitoring Officer the initial decision on whether a complaint should be investigated, subject to consultation with the Independent Person, and with the Chief Executive if the Monitoring Officer considers this appropriate, and with the flexibility to refer particular complaints to the Standards Committee if the Monitoring Officer feels that it would be inappropriate for her to take the decision. These arrangements should also offer the opportunity for the Monitoring Officer, in consultation with the Chief Executive as appropriate, to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation – an opportunity that has not been available under the statutory scheme of the 2000 Act. The Monitoring Officer would then report to each scheduled Standards Committee meeting on the number and nature of complaints received and decisions taken on them.
- 2.11 Where a complaint is referred for investigation, and the investigating officer finds no evidence of failure to comply with the Code, the Monitoring Officer could be given delegated authority, in consultation with the Independent Person, to close the matter, but with a power to refer the matter to the Standards Committee if the Monitoring Officer considers this appropriate. The Monitoring Officer would in any event provide a summary to the next meeting of the Standards Committee.
- 2.12 Where a formal investigation finds evidence of failure to comply with the Code, there may yet be an opportunity for local resolution, avoiding the need for a hearing. Sometimes the investigation report can cause a member to recognise that the conduct was at least capable of giving offence, and the complainant may be satisfied by recognition of fault or an apology. The Committee may wish to recommend that the Monitoring Officer be given delegated authority to agree a local resolution, in consultation with the Independent Person, and with the Chief Executive as appropriate, subject to the complainant being satisfied with the outcome, and subject to a summary report to the Standards Committee.
- 2.13 In all other cases where the formal investigation finds evidence of a failure to comply with the Code, it would be necessary for the Standards Committee (or a Sub-Committee, depending on the size of the full Committee) to hold a hearing at which the member complained of may respond to the investigation report and the Committee (or Sub-Committee) can determine whether the member did fail to comply with the Code and what action, if any is appropriate.
- 2.14 The Act does not give the Council any powers to impose sanctions, such as suspension or the requirement for training or an apology. The actions open to the Council (which could be delegated to the Standards Committee) are limited to reporting the findings to full Council, (in effect “naming and shaming”), recommending the member’s Group Leader to remove the member from any or all Committees, withdrawing Council facilities, such as a computer, or excluding the member from the Council’s offices with the exception of meeting rooms as necessary for attending meetings of Council/Committee. There is no right of appeal.
- 2.15 With regard to parish councils, the Act gives this Council no power to do any more in respect of a parish councillor than to make a recommendation to the parish council on action to be taken in respect of the councillor. Parish councils will be under no obligation to accept any such recommendation. The only way round this would be if a joint committee were to be established, and, as indicated earlier in this report, that would be a matter for the longer

term.

The Committee may wish to recommend to Council:

That the Monitoring Officer be given delegated authority to receive complaints, to seek informal resolution wherever possible, and, in consultation with the Independent Person and with the Chief Executive if appropriate, to determine whether a complaint merits formal investigation, and to arrange such investigation.

Where an investigation finds “no failure to comply”, the Monitoring Officer be authorised to close the matter, in consultation with the Independent Person, and with the Chief Executive if appropriate, reporting the outcome to the Standards Committee.

Where an investigation finds a failure to comply with the Code, the Monitoring Officer, in consultation with the Independent Person, and with the Chief Executive if appropriate, be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases. Where such resolution is not possible, the matter to be referred to the Standards Committee (or a Sub-Committee) for hearing.

The Standards Committee to have delegated authority to take a decision on the action to be taken in respect of a member who, following a hearing has been found to have failed to comply with the Code.

Independent Persons

- 2.16 The “arrangements” adopted by Council must include provision for the appointment by the Council of at least one Independent Person, who must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council (not just of those present and voting).
- 2.17 A person is not considered independent if he is, or has been within the last five years, an elected or co-opted member of the Council, a parish council in the district, or of a Committee or Sub-Committee of the Council or a parish council, or an officer of the Council or a parish council, or is a relative or close friend of a current member or officer of the Council or a parish council.
- 2.18 The Independent Person must be consulted before the Council makes a finding as to whether a member has failed to comply with the Code of Conduct, or decides on action to be taken in respect of that member. The Independent Person may be consulted by the Council in respect of a standards complaint at any other stage, and may be consulted by a member or co-opted member of the Council or of a parish council against whom a complaint has been made. This would appear to raise problems in that an Independent Person who has been consulted by a member against whom a complaint has been made, might as a result be regarded as prejudiced on the matter, and not able to be involved in the determination of the complaint.
- 2.19 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. This does not therefore resolve any potential “conflict” problems. If only one Independent

Person is to be appointed, it has been suggested that it would be appropriate to appoint one or two reserve candidates, who could fill the role at short notice if the appointed Independent Person were no longer able to discharge the function. Council will need to consider how many Independent Persons should be appointed; it will be necessary for the appointment process to commence as soon as possible to ensure that the role is filled when the new provisions come into force.

- 2.20 The Independent Person may receive allowances or expenses in connection with the duties of the appointment. As the Independent Person is not a member of the Council or a Committee, the remuneration to be paid does not fall within the remit of the Independent Remuneration Panel, and is a matter for the sole discretion of Council. The role is likely to be less onerous than that of the current Chairman of the Standards Committee, but it is difficult at this early stage to assess the number of occasions the Independent Person is likely to be consulted.

The Committee may wish to make recommendations to Council as to the number of Independent Persons (and/or reserves) who should be appointed and any allowance that should be paid, and recommend that the Monitoring Officer be authorised to commence the advertisement process, with a Panel comprising the Chairman of the Committee and two other members of the Committee to short-list and interview candidates and to make a recommendation to Council for appointment.

The Register of Members' Interests

- 2.21 The Act abolishes the concepts of personal and prejudicial interests. Regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the registers for parish councils, which have to be available for inspection at the City Council's offices, on the City Council's website and on a parish council's website if it has one.
- 2.22 At the time of writing this report, it is not known how DPIs will be defined, but they are likely to be broadly similar to the current prejudicial interests. The Act extends the requirement for registration to cover not just the member's interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.
- 2.23 The provisions in the Act in respect of the Council's Code of Conduct require it to contain requirements for the registration and disclosure of other pecuniary interests and non-pecuniary interests as the Council considers appropriate. However, these requirements cannot be drafted until the definition of DPIs is known.
- 2.24 DPIs must be registered within 28 days of becoming a member. Failure to register is a criminal offence. There will be no continuing requirement for a member to keep the register up to date, except on re-election, but it is likely that members will register new interests from time to time, as this will avoid the need for disclosure at meetings. In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 2.25 If different parish councils adopt different Codes of Conduct, with different

provisions for the registration of interests, as is open to them, the task of preparing the register is likely to be onerous, and there is no provision for the Council to recover the cost from the parish councils.

At this stage, before the Regulations are in place, it will be difficult for the Committee to make recommendations in respect of the registration of interests. Many of the requirements with regard to the holding of the register are in any event statutory, so that there will be little discretion.

Disclosure of Interests and Withdrawal from Meetings

- 2.26 The duty to disclose and not participate arises whenever a member attends a meeting and is aware that he/she has a DPI in any matter being considered at the meeting. The member must disclose the interest to the meeting if it has not been registered. However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or sent a request to the Monitoring Officer to register it (a "pending notification"). This means that the interest may not be clear to members of the public attending the meeting, who may not be aware of the contents of the register.
- 2.27 Where a member does make a disclosure of a DPI at a meeting, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can be entered on the register.
- 2.28 If a member has a DPI in any matter, the member must not participate in any discussion of the matter at the meeting, nor participate in any vote on the matter. This would appear to preclude making representations as a member public as currently permitted by paragraph 12(2) of the Code. It will however be possible for a member to obtain a dispensation (see below).
- 2.29 Failure to comply with the above requirements is a criminal offence. The Council's Code of Conduct must make "appropriate" provision for disclosure and non-participation for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct and not a criminal offence.
- 2.30 The Act does not provide for any requirement to withdraw from the meeting room, but this could be covered by amendments to the Council's Procedure Rules. Failure to comply would not be an offence or a breach of the Code of Conduct, although the meeting could vote to exclude the member.
- 2.31 Similar provisions apply to preclude individual Cabinet members from taking a decision in a matter in which they have a DPI.

The Committee may wish to recommend that Council amends its Procedure Rules (applicable to all meetings) to include a requirement that a member must withdraw from the meeting room, including the public gallery, during the whole consideration of any item of business in which the member has a DPI, except where the member is permitted to remain as a result of the grant of a dispensation.

Sensitive Interests

- 2.32 The Act re-enacts the existing code of conduct provisions on sensitive interests. Where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which the member would be

required to disclose) at a meeting or in the register would lead to the member or a person connected with the member being subject to violence or intimidation, the member may request the Monitoring Officer to agree that the interest is a “sensitive interest”. In those circumstances, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register.

Dispensations

- 2.33 A dispensation may be granted for the following reasons:
- That so many members of the decision-making body have DPIs that it would impede the transaction of business
 - That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of the vote
 - That the Council considers that the dispensation is in the interests of persons living in the Council’s area
 - That without a dispensation, no member of Cabinet would be able to participate in a matter before Cabinet
 - That the Council considers that it is otherwise appropriate to grant a dispensation
- 2.34 Parish Councils will be responsible for granting their own dispensations. The Council may delegate the granting of dispensations to the Standards Committee (or a Sub-Committee) or to the Monitoring Officer
- The Committee may wish to recommend that Council delegate to the Standards Sub-Committee (or a sub-committee of the Standards Committee) authority to grant dispensations. The Committee may wish to recommend that the Independent Person is consulted before a dispensation is granted.**

Transitional Arrangements

- 2.35 Regulations will provide for the transfer of Standards for England cases to the relevant Council following the abolition of Standards for England. This Council does not currently have any cases with Standards for England. Regulations will also provide for a transitional period for the determination of outstanding complaints under the current Code of Conduct, but the power of suspension and the right of appeal to the First Tier Tribunal will not apply during the transitional period.

3.0 Details of Consultation

- 3.1 There has been no formal consultation. The report has been based on advice received through the Association of Council Secretaries and Solicitors, and will be updated orally at the meeting should any Regulations be drafted or made, or any further information or guidance received after the publication of the agenda.

4.0 Conclusion

- 4.1 The Committee is asked to note the contents of the legislation, and to make recommendations to Council as to its effective implementation.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly arising from this report. Any "arrangements" adopted by the Council will ensure that any member against whom a complaint is made has the opportunity to respond to such complaint, and a fair hearing if the matter proceeds to a hearing.

LEGAL IMPLICATIONS

The legal implications are included in the report.

FINANCIAL IMPLICATIONS

It is difficult to assess the financial implications at this early stage. The allowance for the Independent Person(s) will need to be considered, as will the appropriate level of special responsibility allowance for the Chairman of the new Committee. The most time consuming aspect of the implementation of the legislation is likely to be the preparation and maintenance of the registers of interests for the parish councils, but at this stage it is considered that this can be met within existing budgets.

OTHER RESOURCE IMPLICATIONS**Human Resources:**

None

Information Services:

There will be a requirement for the register of interests for this Council and the parish councils to be available on the Council's website.

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as the adviser to the Standards Committee and the officer on whom the Localism Act places certain obligations.

BACKGROUND PAPERS

None

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