

The Localism Act 2011 – The Amended Standards Regime

Report of the District Solicitor and Monitoring Officer

PROPOSED RECOMMENDATION TO COUNCIL

That the recommendations 1 to 7 featured in the below report be adopted in respect of the Council's Code of Conduct and Standards Regime.

1 The Localism Act 2011

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted councillors. These changes come into force on 1 July 2012. This report describes the changes and recommends the actions required for the Council to implement the new regime.

2 Duty to promote and maintain high standards of conduct

The Authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

3 Standards Committee

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee, so there will be no requirement to have a Standards Committee. However, there will still be a need to deal with standards issues and case work, so that it is likely to remain convenient to have a Standards Committee. This will be a normal committee of Council, without the unique features which the Standards Committee was given by the previous legislation. As a result:

- 3.1 The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;
- 3.2 The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages. Under the transitional provisions which have now been issued, up to 1 July 2013 the previous co-opted independent members can be appointed as Independent Persons for such terms as Council considers appropriate; however, when Independent Persons come to be appointed after 1 July 2013, the former Independent Members will not be eligible for re-appointment. The new Independent Persons may be invited to attend meetings of the Standards Committee, but cannot be voting members of the Committee;
- 3.3 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives. These would be co-opted but non-voting members.

Recommendation 1:

- a. **That the Council establish a Standards Committee comprising eight elected members of the District Council, appointed proportionally (currently 6 Conservative, 1 Labour and 1 Liberal Democrat).**
- b. **That the Leader of the Council be requested to nominate to the Committee one member who is a member of the Executive;**
- c. **That the Parish Councils be invited to nominate a maximum of three Parish Councillors to be co-opted as non-voting members of the Committee.**

4 The Code of Conduct

The current ten General Principles and Model Code of Conduct will be repealed and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council is required to 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, viewed as a whole, be consistent with the following seven principles:

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

The Council can decide what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which have now been made under the Act, require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs). The Act also requires an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. A draft Code has been prepared which complies with these requirements, and is attached as **Appendix 4A**.

The Act prohibits members with a DPI from participating in Council business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

Recommendation 2:

- a) **That Council adopt the Code of Conduct set out in Appendix 4A to this report.**
- b) **That the Standards Committee undertake a review of the code in six months' time so that any changes can be made in the light of operational experience.**

5 Dealing with Misconduct Complaints

5.1 Arrangements for dealing with complaints

The Act requires that the Council adopt arrangements for dealing with complaints of breach of Code of Conduct both by District Council members and by Parish Council members, and such complaints can only be dealt with in accordance with such arrangements. So 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 relevant Code of Conduct.

The advantage is that the Act removes the requirements for separate Initial Assessment, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. As the Act gives neither the Standards Committee nor the Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

5.2 Decision whether to investigate a complaint

In order to take advantage of the new flexibility, it is suggested that the initial decision on whether a complaint requires investigation be delegated to the Monitoring Officer, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would not be appropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to try and resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.

It is suggested that the Monitoring Officer make an annual report to the Standards Committee which would enable him to report on the number and nature of complaints received, to draw to the Committee's attention areas where training or other action might avoid further complaints, and advise the Committee of progress on investigations and costs.

5.3 "No Breach of Code" finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to the Hearings Sub-Committee and the Sub-Committee takes any decision whether to accept the findings of the investigation and take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels it appropriate. It is suggested that the Monitoring Officer provides a summary report of each such investigation to Standards Committee for information.

5.4 "Breach of Code" finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution only after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Hearings Panel (constituted as a Sub-Committee of Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearing Panel can determine whether the member did

fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

5.5 Action in response to a hearing finding of failure to comply with Code

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following:

- 5.5.1 Censuring or reprimanding the member;
- 5.5.2 Reporting its findings to Council or to the Parish Council for information;
- 5.5.3 Recommending to the member’s Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 5.5.4 Recommending to Council that the member be replaced as Executive Leader of the authority;
- 5.5.5 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 5.5.6 Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- 5.5.7 Removing (or recommending to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the Council or by the Parish Council;
- 5.5.8 Withdrawing (or recommending to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 5.5.9 Excluding (or recommending that the Parish Council) exclude the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Localism Act gives the Standards Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation.

5.6 Existing Complaints

Existing complaints under the old Code, and which have been investigated, will now be dealt with under the new arrangements. Where a complaint has not yet been

investigated, there is no statutory provision for it to be determined. So such complaints now lapse.

5.7 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

Recommendation 3:

- a. **That the Council adopt the Arrangements for dealing with standards allegations as set out in Appendix 4B to this report.**
- b. **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**
- c. **That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation.**
- d. **That the Monitoring Officer be authorised to seek resolution of complaint without formal investigation wherever practicable, that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and that he report annually to the Standards Committee on the discharge of this function;**
- e. **Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be authorised to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;**
- f. **Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;**
- g. **That Council delegate to the Hearings Panel of the Standards Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –**
 - **Recommending to the member's Group Leader (or in the case of independent members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;**
 - **Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;**

- **Instructing the Monitoring Officer to (or recommending that the Parish Council) arrange training for the member;**
- **Removing (or recommending to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);**
- **Withdrawing (or recommending to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or**
- **Excluding (or recommending that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**

6 Independent Person(s)

The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person.

6.1 Independence

The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the District Council (not just of those present and voting).

A person is considered not to be "independent" if:

- 6.1.1 He or she is, or has been within the last five years, an elected or co-opted member or an officer of the District Council or of any of the Parish Councils within its area;
- 6.1.2 he or she is, or has been within the last five years, an elected or co-opted member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area. (**Note:** regulations have recently provided that up until 1 July 2013, the current co-opted Independent Members can be appointed as Independent Persons, for such terms a Council considers appropriate, but where Independent Persons come up for re-appointment after 1 July 2013, the former Independent Member will not be eligible to be appointed); or
- 6.1.3 he or she is a relative or close friend of a current elected or co-opted member or officer of the District Council or any Parish Council within its area, or of any elected or cop-opted member of any Committee or Sub-Committee of such Council.

For this purpose, "relative" comprises:

- (a) the candidate's spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate's grandparent;
- (d) any person who is a lineal descendent of the candidate's grandparent;
- (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);

- (f) the spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

6.2 Functions of the Independent Person

The functions of the Independent Person(s) are:

- They **must** be consulted by the authority before it 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 (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They **may** be consulted by the authority in respect of a standards complaint at any other stage; and
- They **may** be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

It would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

6.3 Remuneration

As the Independent Person is not a member of the authority or of its committees or sub-committees, the remuneration of the Independent Person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel. Council have already agreed in accordance with a recommendation of the Standards Committee that two Independent Persons be appointed and that their remuneration be an annual allowance of £200.00 each and an allowance of £25.00 plus expenses for each meeting he or she is required to attend.

- 6.4 The Monitoring Officer has advertised for the position of two Independent Persons in accordance with the previous decision.

Recommendation 4:

That Council appoint such person(s) as Independent Person(s) as the Monitoring Officer shall recommend.

7 The Register of Members' Interests

7.1 The Register of Members' Interests

The Localism Act 2011 abolishes the concepts of personal and prejudicial interests and replace them with "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 register for Parish Councils, which also have to be

open for inspection at the District Council offices and on the District Council's website.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 specify what are DPIs. These are broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover *not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.*

The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Monitoring Officer is required by the Act to set up and maintain registers of interests for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

7.2 Registration on election or co-option

Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.

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.

There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

Recommendation 5:

- a. That the Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;**
- b. That the Monitoring Officer ensure that all members are informed of their duty to register interests;**
- c. That the Monitoring Officer prepare and maintain new registers of members' interests for each Parish Council to comply with the Act and any Code of**

Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and

- d. That the Monitoring Officer arrange to inform Parish Clerks on the new registration arrangements.**

8 Disclosure of Interests and Withdrawal from Meetings

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So:

- 8.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.
- 8.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). 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 at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.
- 8.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 8.4 If a member has a DPI in any matter, he/she must not:
 - 8.4.1 Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - 8.4.2 Participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 8.5 Failure to comply with the requirements (paragraphs 8.2, 8.3 or 8.4) becomes a criminal offence, rather than leading to sanctions;
- 8.6 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct rather than a criminal offence.
- 8.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

Recommendation 6: That an additional Procedural Standing Order be adopted which equates to the current Code of Conduct requirement that a member must withdraw

from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

9 Disclosure and withdrawal in respect of matters to be determined by a Single Member

- 9.1 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers.
- 9.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter:
 - 9.2.1 Unless the DPI is already entered in the register of members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
 - 9.2.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 9.3 The additional Standing Order referred to above can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.
- 9.4 Note that the Act here effectively removes the rights of a member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct

10 Sensitive Interests

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, 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 of members' interests.

11 Dispensations

- 11.1 The provisions on dispensations are significantly changed by the Localism Act 2011.
- 11.2 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds:
 - 11.2.1 That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realise how many members have prejudicial interests in

the matter, by which time it is too late to convene a meeting of Standards Committee); and

- 11.2.2 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.
- 11.3 In future, a dispensation will be able to be granted in the following circumstances:
 - 11.3.1 That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business” - in practice this means that the decision-making body would be inquorate as a result;
 - 11.3.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - 11.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - 11.3.4 That, without a dispensation, no member of the Cabinet would be able to participate in this matter; or
 - 11.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 11.4 Any grant of a dispensation must specify for how long it lasts, up to a maximum of 4 years.
- 11.5 Where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. It is suggested that the discretion to grant dispensations remains with Standards Committee, after consultation with the Independent Person.

Recommendation 7: That Council delegate the power to grant dispensations to the Standards Committee, after consultation with the Independent Person.

12 Transitional Arrangements

The Localism Act (Commencement No.6 and Transitional, Savings and Transitory Provisions Order) 2012 provides for:

- a. the transfer of Standards for England cases to local authorities following the abolition of Standards for England on 31 March 2012;
- b. the determination of any outstanding complaints under the current Code of Conduct and referrals or appeals relating to a decision by a standard committee made before 1 July 2012;
- c. removal of the power of suspension from 7 June 2012; and
- d. the new arrangements being adopted by Council and taking effect on or after 1 July 2012.

Appendix 4A
Draft Code of Conduct

Appendix AB
Draft Arrangements