

Body:	STANDARDS COMMITTEE
Date:	MONDAY 23 JANUARY 2012
Subject:	LOCALISM ACT
Report Of:	LAWYER TO THE COUNCIL AND MONITORING OFFICER
Ward(s)	All
Purpose	To update the Committee on the Localism Act which was received Royal Assent on 15 November 2011.
Recommendation:	That the Committee instructs the Monitoring Officer to produce a draft Code of Conduct, draft arrangements for dealing with complaints and a register of members interests.
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1.0 Background

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1 April 2012 but is now likely to be a date in July.
- 1.2 This report describes the changes and details the actions required for the Council to implement the new regime.

2.0 Duty to promote and maintain high standards of conduct

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

3.0 Standards Committee

- 3.1 The Act repeals Section 55 of the Local Government Act 2000 which provides for the current statutory Standards Committees. There will therefore be no requirement for a Standards Committee. However, there will be a need to deal with standards issues and casework and the Council will therefore have to consider options for dealing with this work in an efficient way. This report will refer to a Standards Committee to describe the Committee which deals with Standards work.
- 3.2 It will be a normal Committee of the Council for Council without the unique features which were conferred by the previous legislation. As a result the composition of the Committee will be governed by proportionality.

3.3 The Act establishes a new category of Independent Persons who must be consulted at various stages. Unfortunately, the legislation appears to prevent the current independent members from serving as Independent Persons for five years. This is dealt with later in the report. The current co-opted members' terms of office will end as from the date the new provisions come into force.

4.0 The Code of Conduct

4.1 The current ten principles of the model Code of Conduct will be repealed and members will no longer have to give an undertaking to comply with the Code of Conduct (unless required to do so by our Standing Orders). However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in their official capacity. The Council's new Code of Conduct must be consistent with the following seven principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Council has discretion as to what it includes in its new Code of Conduct provided that it is consistent with the seven principles. Your Monitoring Officer meets regularly with the Monitoring Officers of neighbouring Councils and is working to explore the possibility of having a Code which is adapted by all the local Districts, Boroughs, East Sussex County Council and Brighton and Hove Council.

4.2 Regulations to be made under the Act will require the registration and disclosure of "Discloseable Pecuniary Interest" (DPIs), which will be similar to the current prejudicial interests. We are waiting to see what these will be. The provisions of the Act also require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests. It is not yet possible to draft Code provisions which reflect the definition of DPIs which will appear in the Regulations but your Monitoring Officer is likely to put forward a draft which is broadly similar to our current Code of Conduct. The Act prohibits members with the DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room. Standards Committee may feel that there is some benefit in maintaining the current rules in relation to withdrawing from meeting rooms.

4.3 The Council's new Code of Conduct will have to deal with –

- General conduct rules to give effect to the seven principles. This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct and the easiest course of action would be to re-adopt these paragraphs; and
- Registration and disclosure of interests other than DPIs effectively replacing the current personal interest provisions. Until we know what will constitute a DPI it is difficult to know what additional disclosure would be appropriate.

5.0 Dealing with Misconduct Complaints

5.1 The Act requires that the Council adopt "arrangements" for dealing with complaints of breach of Code of Conduct. The Act repeals the requirements for separate referrals, reviews and hearing sub-committees, and enables the

Council to establish its own process, which can include delegation of decisions on complaints. Indeed as the statutory provisions no longer give the Standards Committee or the Monitoring Officer special powers to deal with complaints, it is necessary for the Council to delegate appropriate powers to Standards Committee and to the Monitoring Officer.

- 5.2 It seems sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether the complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where she feels that it would be appropriate, for example where she has previously advised the member on the matter or the complaint is sensitive and/ or serious.
- 5.3 These arrangements could also offer the opportunity to the Monitoring Officer to seek to resolve a complaint informally before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that she should be accountable for its discharge for this purpose, and the Standards Committee may feel it is appropriate for the Monitoring Officer to make periodic reports to the Standards Committee which would enable her to report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints and keep the Committee advised of progress on investigations and costs.
- 5.4 Where a formal investigation finds no evidence of failure to comply with the Code the decision to take no further action could be left with the Monitoring Officer. Where formal investigation finds evidence of a failure to comply with the Code of Conduct it may still be appropriate for some local resolution to be sought. It may be appropriate in these circumstances for the Monitoring Officer to consult with the Independent Person, and possibly the complainant.
- 5.5 In other cases where the formal investigation finds evidence of a failure to comply with the Code of Conduct it would be necessary for the Standards Committee to hold a hearing at which the member against whom the complaint has been made can be respond to the investigation report and the Committee can decide whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result. This process will be determined by the Council but must accord with the rules of natural justice.

6.0 Sanctions

- 6.1 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 failure to comply with the Code of Conduct is found, the range of actions which the authority can take is limited but could include, among other things, a formal letter to the member in question, formal censure through a motion at Full Council, a recommendation to the member's political group that they are removed from Committees, or issuing press release which details the breach. There is no requirement to put in place any appeals mechanism though the decision would obviously be open to Judicial Review by the High Court if it was wrong in law or patently

unreasonable.

- 6.2 Again, your Monitoring Officer is working with other local authorities to see if we can work together to come up with the same processes to deal with complaints. Draft arrangements will be put forward in due course.

7.0 Independent Persons

- 7.1 The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person. The Independent Person must be appointed through a process of public advertisements, applications and appointment by a positive vote of a majority of all members of the District Council. The person is not considered to be "independent" if

- he 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;
- he 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 (which would preclude any of the current co-opted independent members of Standards Committee from being appointed an Independent Person) ; or
- he is a relative or close friend of the current elected or co-opted member or officer of the District Council or any Parish Council within its area, or any elected or co-opted member of any Committee or Sub-Committee of such a Council. There is a wide definition of "relative" which includes the candidate's spouse or civil partner and various others connected to him.

- 7.2 The functions of the IP are:

- they must be consulted by the authority before its a finding to whether the member failed to comply with the Code of Conduct or decides on action to be taken in respect of that member;
- 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 Council against whom a complaint has been made.

- 7.3 This causes some problems, as 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 therefore be regarded as prejudiced on the matter, to be involved in the determination of that complaint. There may therefore be benefits in appointing more than one Independent Person, and consideration will need to be given to whether this authority could join with other authorities to recruit a panel of Independent Persons who would be available when necessary. The remuneration can now be determined without reference to the Independent Remuneration Panel. The role of the Independent Person is likely to be substantially different to the current

independent members. He/she may be invited to attend the meetings of the Standards Committee but will not be a formal member and cannot chair.

8.0 The Register of Members Interests

8.1 The Monitoring Officer will be required to maintain a register of interests which must be available for inspection and available on the Council's website. It is not clear what the DPIs will comprise but they are likely to be equivalent to the current prejudicial interests. The intention was to simplify the registration requirements, but in fact the Act extends the requirement for registration to cover not only the member's own interest but also those of the member's spouse or civil partner or someone living with the member in a similar capacity. Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is a criminal offence. Failing to register non DPI interests would merely be a failure to comply with the Code. There is no continuing requirement for members to keep the register up-to-date but it is likely that members will register new interests from time to time as this avoids the need for disclosure in meetings.

9.0 Disclosure of Interests and Withdrawal from Meetings

9.1 If a member has a DPI in any matter he must not participate in any discussion of the matter at the meeting or participate in any vote unless he has obtained a dispensation. Failure to comply with the requirements is a criminal offence. The Code of Conduct must make "appropriate" provisions for disclosure and withdrawal of interests other than DPIs and failure to comply with these will be a breach of the Code of Conduct but not a criminal offence.

9.2 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. The Monitoring Officer is likely to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including the public gallery during the whole of the consideration of any item of business in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.

10.0 Sensitive Interests

10.1 The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests.

11.0 Dispensations

11.1 In future, a dispensation will be able to be granted in the following circumstances

- That so many members of the decision making body have DPIs in a matter that it "imped the transaction of the 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 outcome of any vote on the matter;

- That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- That without a dispensation, no member of the Cabinet would be able to participate on this matter; or
- That the authority considers that it is otherwise appropriate to grant a dispensation.

11.2 This power can be delegated to the Standards Committee or the Monitoring Officer.

12.0 Consultation

12.1 No formal consultation has taken place.

13.0 Resource Implications

13.1 None

14.0 Financial

14.1 None

15.0 Staffing

15.1 The implementation will take up a considerable amount of Officer time.

16.0 Conclusion

16.1 The Localism Act provides an opportunity to simplify our processes relating to Standards. They are likely to increase the discretion given to the Monitoring Officer in dealing with complaints. The Act provides a new role for Independent Persons. There will be a need for training for all members on the new regime in due course.

**ALICE ROWLAND
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Background Papers:

Articles in the Law Gazette, Local Government Lawyer, ACSeS bulletins

Model Report to Standards Committee and Model Arrangements for Dealing with Complaints (written by Peter Keith-Lucas, Bevan Britten)

(AR/DF/LG/160/1)