

STANDARDS COMMITTEE

DATE: 19th June 2012

REPORT OF: Monitoring Officer

SUBJECT: THE LOCALISM ACT 2011 – THE REVISED ETHICAL FRAMEWORK

PART I

RECOMMENDATION

1. That the Standards Committee give consideration to the issues set out in this report and make recommendations to the Council in relation to the new standards regime as follows:-
 - (a) As to whether a separate Standards Committee should be established or issues relating to standards matters, together with the other matters currently dealt with by the Standards Committee should fall to another Council committee;
 - (b) As to whether the option of establishing a joint Standards Committee with one or more Devon authorities should be pursued;
 - (c) As to the membership and terms of reference of the Standards Committee, if recommended, including whether or not Parish Council representatives and the Independent Person should be co-opted to the Committee
 - (d) That the Council adopt a complaints process as outlined in the flow chart at Appendix One and that a procedure be drawn up by the Monitoring Officer in conjunction with the other Devon Authorities
 - (e) That the Monitoring Officer be authorised as follows and that these changes be added to the Constitution.
 - To act as the Proper Officer for receipt of complaints against Members for alleged failure to abide by the Council's Code and the Codes of its Town and Parish Councils;
 - To arrange the appropriate publicity for the new systems outlined above and which any Regulations require
 - To make any amendments to the Constitution consequential to the decisions taken and required by Regulations
 - To exercise his/her discretion in collecting any information in advance of any reference to the Committee or Independent Person that will assist them in their consideration of a complaint
 - To determine requests from members for dispensations following consultation with the Chairman of the Committee dealing with standards matters

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- (f) As to the revised Code of Conduct to be adopted by the Council, reflecting as appropriate the illustrative text and Code of Conduct templates produced by the Department of Communities and Local Government, the Local Government Association and the National Association of Local Councils, and if practicable, reflecting a Devon wide approach.
 - (g) As to what interests, if any, should be disclosed in the Register of Interests other than the disclosable pecuniary interests under the regulations.
2. That the Monitoring Officer be authorised to make arrangements for the appointment of up to four Independent Persons following open competition, in line with the process used for the appointment of existing independent members whereby interest is sought via public advertisement.

1. PURPOSE

To advise Members of the changes to the Ethical Framework introduced under the provisions of the Localism Act 2011.

2. BACKGROUND

The Localism Act received Royal Assent on 15 November 2011.

The Act contains provisions relating to the standards regime and regulations were released as this report and the agenda for this meeting was published. They will be brought into force on 1 July 2012. Attached to this report in Appendix Two is a commentary from Bevan Brittan, produced immediately prior to the enactment of the Localism Bill. The position remains largely unchanged from that set out. The Localism Act brings about significant changes to the Code of Conduct regime.

The headlines in relation to this are set out in more detail below. This summary updates members on the current position following previous reports to Committee and information circulated to Members as it has become available. The current legislation relating to Standards will be repealed, meaning that there will no longer be a legislative requirement to establish a statutory Standards Committee. The Council will therefore need to determine whether it wishes to retain a dedicated Standards Committee or instead discharge these functions through another committee, for example the Audit Scrutiny Committee.

It also means that Parish representatives and independent members who are currently co-opted members of the Standards Committee by virtue of the Local Government Act 2000 could remain as co-opted members but would not have voting rights.

The legislation which set out the framework for dealing with Code of Conduct complaints and sanctions has also been repealed.

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3. GENERAL DUTY TO PROMOTE AND RETAIN HIGH STANDARDS OF CONDUCT

The Act introduces a new general duty to promote and maintain high standards of conduct by members and voting co-opted members. However, the Act provides a limited mechanism or power by which authorities can enforce those high standards of conduct.

4. REQUIREMENT TO ADOPT A CODE

All “Relevant Authorities”, which includes district and parish councils, must adopt codes. The code must deal with the conduct expected of members and voting co-opted members when acting in that capacity. The general principles and Model Code of Conduct are revoked but an Authority’s Code must be consistent with the seven ‘Nolan’ principles of selflessness, integrity, honesty, objectivity, accountability, openness and leadership. These are similar to the ten general principles but leave out personal judgment, respect for others, duty to uphold the law and stewardship.

The Code must also provide for the registration of “disclosable pecuniary interests” as defined by regulations (and non-pecuniary interests). Otherwise, authorities are free to determine what they put in or leave out of a Code. Full Council must make the decision to adopt the Code and all Standards matters are to be non-executive functions.

There is no nationally prescribed Code. There are suggested codes from:-

The Local Government Association,

The Department of Communities and Local Government have published an “illustrative text” and

The National Association of Local Councils have published a draft suggested Code.

The Local Government Association’s “template” code (Appendix Three)

The LGA has worked with a range of stakeholder organisations to produce the template code. This short outcome-focused code is accompanied by a one-page guidance note to highlight some of the conduct that is consistent with the code.

These documents are provided by the LGA to assist authorities in thinking about how their new code of conduct should look and it remains the LGA’s view that it is for each council’s locally elected members to decide what the right code will look like in their area and the LGA hope that the documents provide useful in discussions.

The Department of Communities and Local Government’s illustrative text (Appendix Four)

The government has published this illustrative text which councils can, if they choose, use as a basis for their new local code of conduct and sees it as an opportunity to raise the bar on local standards. The new code is a matter for local determination, but the illustrative text is a suggestion of what a new code might look like. By releasing councils from the old regime

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of prescriptive uniform codes councils will be able to ensure that their own codes encourage freedom of speech and cannot be used to silence or discourage conscientious councillors from whistle blowing on misconduct.

The DCLG suggestion is, like the LGA template, illustrative but not comprehensive. Some councillors may find this brevity helpful. Equally this approach may leave some councillors in an uncertain position unless additional guidance is issued.

The National Association of Local Councils proposed Code and legal briefing is attached in Appendix Five.

NALC has produced its own template code as it appreciates not all parishes will wish to write their own code or may not want to adopt the principal authorities code. While recognising this it would make the Council's role much more challenging if 46 different codes were adopted by the parishes in Teignbridge.

A Suggested Devon wide code

Monitoring officers from the Devon authorities have met and have produced a suggested draft Code for consideration by members which is attached in Appendix Five. This is a first draft and is based on feedback that we have had from members within our own authorities in relation to the current Code and its operation and what members might like to see in the future code. We also appreciate the difficulties, in the absence of a national Code, of adopting a "one size fits all" approach and recognise that it is for each Authority to adopt a code that is right for its own area. It is recognised that some members may consider that this Code goes beyond what is required by the legislation and may be considered to constrain rather than assist. There are also some provisions that may require modification, further explanation or clarification. However with the will to work jointly as much as possible it is hoped to reach a general consensus.

Thanks are due to Devon County Council which provided this first draft.

5. BREACHES OF THE CODE OF CONDUCT

Authorities must have in place arrangements under which alleged breaches of the Code of Conduct can be investigated and decisions on allegations can be taken, with or without an investigation or hearing. Broadly the new regime provides an opportunity for local resolution rather than formal investigation, with an emphasis on identifying and resolving underlying issues.

A suggested outline procedure for dealing with complaints is attached in Appendix One.

Sanctions for breach of the Code are more limited and do not include suspension of a councillor. They do however include naming and shaming and possibly withdrawal of facilities in some cases.

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Whilst District Councils are responsible for having arrangements in place for investigating and determining allegations about parish councillors, Parish Councils are under no obligation to have regard to any findings.

6. REGISTER OF INTERESTS

The Monitoring Officer must establish and maintain a Register of Members' Interests and it is for the Authority to determine what is to be entered in that Register. The Register must contain "disclosable pecuniary interests", which are to be defined by regulations. Regulations have just been published and are set out in Appendix Seven.

The Authority will determine within its Code of Conduct what other interests, if any, should be disclosed in the Register.

As before, if a member's interest is such that he or she and the Monitoring Officer consider that there is a risk of the Member or some connected person being subject to violence or intimidation, then neither the entry in the register or the disclosure at a meeting need be specific to the interest.

The Register of Interests must be published on the website for the authority to which it relates. If the parish council does not have a website, then the Register of Interests will be published on the District Council's website.

7. DISCLOSING INTERESTS AT MEETINGS

If a Member has a disclosable pecuniary interest in any matter considered at a meeting at which the Member is present, the interest is not registered in the Authority's Register and the Member is aware of the interest, the Member must disclose their interest to the meeting. This applies to formal meetings but not explicitly to other meetings.

8. PARTICIPATION

If a Member discloses any interest, he or she must not participate in any discussion or vote on the matter at the meeting, subject to dispensations which may apply, but may remain in the meeting unless precluded from doing so by the Code of Conduct.

9. OFFENCES

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The Localism Act creates an offence if any person without reasonable excuse has failed to notify the Monitoring Officer of a disclosable pecuniary interest within the relevant time period or participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest.

It is also an offence to provide the Monitoring Officer with false or misleading information or where the member is reckless as to whether the information is true or not misleading.

10. PROSECUTIONS BY OR ON BEHALF OF THE DIRECTOR OF PUBLIC PROSECUTIONS

A member guilty of an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000) and a court may also disqualify the Member from being or becoming a Member for a maximum of five years.

11. DISPENSATIONS

The Authority may grant a dispensation releasing the Member from either not participating in a discussion, or voting, or both. A written request must be made to the "Proper Officer". The Act sets out the criteria for dispensations. The power to grant a dispensation can be delegated, for example to the Monitoring Officer, to enable dispensations to be granted at relatively short notice. Parish Councils are now responsible for granting their own dispensations.

12. APPOINTMENT OF INDEPENDENT PERSON

The Act requires authorities to appoint an "Independent Person". The Independent Person must be consulted before a decision is taken to investigate any allegation and the authority may consult the independent person on other complaints. It would appear sensible to delegate the decision as to whether to investigate to the Monitoring Officer, after consultation with the Independent Person. A Member about whom an allegation is made may also consult the Independent Person.

Apart from some initial transitional provisions, the Independent Person cannot be or have been in the last five years a Member, Co-opted Member or officer of the Authority. It appears that this will rule out current Independent Standards Committee Members.

Therefore, Independent Members will only have an ongoing role if the District Council decides to retain a dedicated Standards Committee and co-opt Independent Members as non-voting members to that Committee. Those Independent Members would not be able to chair the Committee.

13. PARISH COUNCILS

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All of the above, including the requirement to adopt a Code, apply to Parish Councils. The view seems to be that Parish Councils are likely to want to adopt the same code as that adopted by the principal authority (see separate report). The primary difficulty is that the District Council will be required to investigate the Code of Conduct breached by Parish Councillors but the Parish Council is under no obligation to have regard to any findings.

14. PARISH REPRESENTATIVES

As with the current independent members of the Standards Committee, the Parish Representatives will cease to hold office unless the Council appoints them as co-opted non-voting members.

15. NEXT STEPS

The Standards Committee is asked to consider the following options and make recommendations as appropriate to the Council:-

1. Standards Committee.

1.1 Does the Council wish to retain a dedicated Standards Committee or could this role be subsumed within another Committee, for example the Audit Scrutiny Committee?

1.2 Should the committee that deals with standards matters include co-opted independent persons and/or Parish Council representatives with no voting rights? If yes,

1.3 What role does the Committee expect the independent person to play? If yes,

1.4 How many independent persons are needed?

1.5 What allowances should the independent person receive?

2. Register of Interests.

2.1 In addition to "disclosable pecuniary interests" defined by regulations, what other interests, if any, does the Council wish to be included in the Register of Interests. This would be reflected in the local Code of Conduct.

3. Withdrawal from meetings.

3.1 There is a local choice over this provision. Should a new provision be introduced requiring the member with a disclosable pecuniary interest to leave the meeting for discussion and voting on that item?

4. Allegations

4.1 Who should be the recipient of allegations of misconduct?

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4.2 Do we need a formal investigation where there is clear evidence of misconduct?

4.3 Who should take the decision on whether an allegation merits investigation?

- (i) Council or a Council committee
- (ii) Standards Committee
- (iii) Sub-Committee of the Standards Committee
- (iv) The Monitoring Officer, after consultation with the Independent person and/or the Chair of the Standards Committee.
- (v) Who should arrange the investigation?

5 Investigation

5.1 Do we need to hold a hearing where there is evidence of misconduct?

5.2 Where an investigation finds evidence of misconduct, should the matter go directly to hearing?

5.3 Should any hearing be conducted by

- (i) Council or a Council committee
- (ii) Standards Committee
- (iii) A hearing panel

5.4 Should the results of hearings be reported for information or approval to

- (i) Council
- (ii) Standards Committee

5.5 What sanctions should the hearing be able to impose?

6 Dispensations.

6.1 Who should receive requests for dispensations?

6.2 Who should have the power to grant dispensations?

6.3 Should the Member have an appeal if his/her application for dispensation is refused.

6.4 What role should party groups have in Standards?

6.5 How can we secure the co-operation of police and parish councils?

Sue Aggett
Monitoring Officer

Wards affected	All
Contact for any more information	Sue Aggett – 01626 215163
Background Papers (For Part I reports only)	Localism Act 2011 and associated regulations and guidance
Key Decision	N
In Forward Plan	N
In O&S Work Programme	N
Community Impact Assessment attached:	N
Appendices attached:	Six