

Report to Council

Subject: New Standards Regime under the Localism Act

Date: 11 July 2012

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1. Purpose of the report

To inform Council of the changes to the standards regime following the introduction of the Localism Act 2011 and seek approval for the introduction of a new regime.

2. Background

2.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The Act repeals certain provisions of the Local Government Act 2000, which provides the basis for the current statutory Standards regime, abolishes Standards for England and requires the Council to introduce a new regime.

2.2 Initially, the date for implementation of these changes was proposed to be 1 April 2012, but a Commencement Order dated 6 June 2012 (circulated to Chief Executives on 8 June) confirmed that the implementation date is 1 July 2012.

2.3 Prior to the receipt of the commencement order on 8 June, the Standards Committee had already started to consider the implications of the Act in readiness to make recommendations to Council. A series of working groups was set up to look at various aspects of the Act and report into the Standards Committee. This report brings together the recommendations of the Standards Committee and its working groups.

3. Proposal

Duty to promote and maintain high standards of conduct

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

Committee

- 3.1 The Localism Act repeals section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. As a result there is no statutory requirement for the Council to have a Standards Committee.
- 3.2 However, there is a requirement in the Act to have in place arrangements under which allegations can be investigated and decisions made. It is proposed that we continue to have a Standards Committee with decisions on allegations following an investigation being made by a sub-committee of the Standards Committee called the Hearings Panel.
- 3.3 Currently, the make-up of the Standards Committee is prescribed in legislation.
 - It must include at least 2 Councillors, 2 Parish members and 25% independent members.
 - One independent member acts as Chairman.
 - It cannot have more than 1 executive member (which cannot be the Leader).
 - Political balance does not apply.
 - A parish member must be present when deciding on a complaint about the conduct of a Parish Councillor.
- 3.4 The reasons for including independent members were to:
 - Increase public confidence in the regime.
 - Give a clear signal that the Standards Committee is fair and impartial.
 - Bring a wider perspective from outside knowledge and experience.
- 3.5 Limiting the number of executive members reflects a degree of independence from the political leadership.
- 3.6 The reasons for not reflecting political balance on the Standards Committee include:
 - The Standards Committee should be above party politics.
 - The Standards Committee needs to have the respect of the whole Council regardless of the ruling group.
 - Improving trust and confidence in the decision making as the Committee is seen as making decisions impartially and without regard to party loyalty.
- 3.7 Whilst the current regime has been criticised for being over bureaucratic, the current Standards Committee consisting of 3 Councillors, 4 independent members and 2 Parish representatives has worked well.

- 3.8 In view of the fact that the current legislation is to be repealed, any new Standards Committee will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result -
- a) 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;
 - b) The current co-opted independent members will cease to hold office. The new Independent Person may be invited to attend meetings of the Standards Committee, but is unlikely to be co-opted onto the Committee;
 - c) The Borough Council will continue to have responsibility for dealing with standards complaints against members of Parish Councils, but the current Parish Council representatives cease to hold office. The Borough Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. If it chooses to do so, the Parish representatives would be co-opted members with no voting rights.
- 3.9 It is proposed that a new Standards Committee should be set up, which is not politically balanced and includes co-opted members for all the reasons outlined above. Whilst the co-opted members would not be able to vote or act as Chairman, they would be able to bring outside experience and knowledge. It is therefore proposed that a Standards Committee which consists of 2 Councillors from each Group and 3 co-opted members (independent and parish representatives) be set up. Sub-Committees known as Hearing Panels consisting of 3 Councillors (1 from each Group) and 1 co-opted Member (drawn from the Committee Members) will deal with decisions on allegations following an investigation.
- 3.10 By virtue of section 17 of the Local Government and Housing Act 1989, it is possible in law to have a Committee which is not politically balanced, provided this is approved by full Council without any member of the authority voting against it. If any Member votes against this proposal, the Standards Committee would have to be politically balanced and an alternative motion proposed. There may however be abstentions.
- 3.11 In view of tight timescales, the Standards Committee have asked that a "recruitment panel" comprising the 3 elected members of the Standards Committee (Councillors Barnes, Boot and Hughes) deal with the recruitment of the co-opted members. The names of the proposed co-opted Members will be provided to Council for approval to co-opt them onto the new Standards Committee.
- 3.12 The current remit of the Standards Committee as it appears in the Constitution is still appropriate subject to some minor changes. The Constitution will also need to include the remit of the Hearings Panel. The Hearings Panel will consider allegations, determine whether the member did

fail to comply with the Code of Conduct and what action, if any, is appropriate as a result. It is proposed that the revised remit of the new Committee attached at Appendix 1 be approved.

New Code of Conduct

- 3.13 The current ten General Principles and Model Code of Conduct are repealed with effect from 1 July, 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 has the power to revise its existing Code or adopt a new one.
- 3.14 The Council has discretion as to what it includes within its new Code of Conduct, but it must, when viewed as a whole, be consistent with the following seven principles –
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
- 3.15 The provisions of the Act also require the Code to contain appropriate requirements for the registration and disclosure of pecuniary interests and interests other than pecuniary interests. Regulations issued on 8 June provide the definition of “Disclosable Pecuniary Interests”.
- 3.16 The LGA has issued a draft code and the CLG has issued an illustrative text, however these documents were considered by the Standards Committee to be insufficient on their own. The proposed Code combines elements of these two documents with the current model Code. It is proposed that the Code of Conduct attached at Appendix 2 be approved to take effect immediately.
- 3.17 The Code has been drafted in accordance with the recommendations of the Standards Committee. It includes the statutory requirements in relation to disclosable pecuniary interests (“DPIs”) but also seeks to plug the gaps in the relation to interests not deemed to be DPIs. In particular, it includes:
- i. a requirement that the member declares DPIs at the meeting (even if they are on the register) and leaves the room (which will be included in a Standing Order dealt with under a separate agenda item);
 - ii. a requirement to complete a register form within 28 days of the Code being adopted and not just from the next election;
 - iii. an ongoing requirement to keep register entries up to date; and
 - iv. interests other than DPIs. In essence, these are interests covered under the existing Code but not included in the definition of DPIs.

It is important to include a requirement that a Member declares DPIs at the meeting (even if they are on the register) and leaves the room in order to protect Members from committing criminal offences and/or allegations that they have sought to influence their colleagues by remaining in the room. At least if a Member is required to declare DPIs at the beginning of the meeting, it will be at the forefront of their minds to consider their position and decide what they need to do. Similarly, if members are required to leave the room they will not be in a position where they inadvertently participate in a debate for example by seeking simply to clarify something which another Member has said.

In terms of other interests, it is again important to protect Members against allegations of bias and predetermination. If we do not include other interests in the Code, there would be no obligation on, for example, a member of the Planning Committee to disclose that they have an option to purchase the land which is subject to the planning application, or the application has been submitted by their daughter, or that the developer concerned has treated them to hospitality. The proposed Code includes those personal interests in the current Code which are not caught by the definition of DPIs.

- 3.18 The Code does not include a requirement to leave the room in relation to interests which are not DPIs as there is doubt about whether the Council has the power to require this. The Council does however have a specific statutory power under section 31(10) of the Localism Act to adopt a standing order excluding a member from a meeting where they have a DPI. A separate report on the agenda recommends that the Council adopt such a Standing Order. Members of the Standards Committee were however extremely concerned if members with interests which could prejudice their judgement were able to remain in the room and participate in the debate. In the absence of a specific statutory power to exclude a member in those circumstances, the Code includes a provision which advises the Member to withdraw.

Introduction of criminal offences in relation to interests

- 3.19 Members should all have received a briefing note circulated by the Council's Solicitor and Monitoring Officer raising awareness of the introduction of criminal offences from 1 July. The note has also been circulated to Parish Council Clerks to enable them to raise awareness amongst Parish Councillors. Members will commit an offence if, without reasonable excuse, they –
- (a) fail to notify the Council's Monitoring Officer within 28 days of their election of any DPIs which they have at the time when the notification is given.
 - (b) fail to disclose a DPI in any matter to be considered, or being considered, to the meeting where that interest is not entered in the Council's register of interests of members and co-opted members.
 - (c) fail to notify the Council's Monitoring Officer of any DPI that they have disclosed to a meeting, where that interest is not already entered in the Council's register of interests of members and co-opted members or

subject to a pending notification, before the end of 28 days beginning with the date of the meeting.

- (d) are an executive member and they fail to notify the Council's Monitoring Officer of any DPI that they have in any matter to be to be dealt with, or being dealt with, by them in the course of discharging that executive function, where that interest is not entered in the Council's register of interests of members and co-opted members or subject to a pending notification, before the end of 28 days beginning with the date that they became aware of such an interest.
- (e) participate, or participate further, in any discussion of a matter in which they have a DPI, or participate in any vote, or further vote, taken on any such matter.
- (f) are an executive member and they take any steps, or any further steps, in relation to any matter to be to be dealt with, or being dealt with, by them in the course of discharging that executive function in which they have a DPI (except for the purpose of enabling the matter to be dealt with otherwise than by them).
- (g) provide information that is false or misleading when notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting and they:
 - i. know that the information is false or misleading, or
 - ii. are reckless as to whether the information is true and not misleading.

Arrangements for dealing with complaints

- 3.20 The Localism Act simply requires the Council to have in place "arrangements" under which allegations can be investigated and decisions made. The only specific obligation is the requirement to seek the view of the Independent Person before making a decision following an investigation. The Council may also choose to consult the Independent Person in other circumstances.
- 3.21 A set of arrangements has been approved by the Standards Committee, which hopefully enables complaints to be dealt with in an effective way, removing some of the bureaucracy in the current system, but retaining those elements which have worked well. It is proposed that the arrangements attached at Appendix 3 are approved by Council.
- 3.22 Members should be aware that the Borough Council will still be responsible for dealing with complaints about parish councillors.

Independent Person

- 3.23 The Localism Act requires that the Council's "arrangements" for dealing with allegations include provision for the appointment of at least one independent person whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. The arrangements approved by the Standards Committee include such provision.
- 3.24 The Localism Act states that a person is considered not to be "independent" if:–
- 1.1.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the Borough Council or of any of the Parish Councils within its area;
 - 1.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Borough Council or of any of the Parish Councils within its area; or
 - 1.1.3 he is a relative or close friend of a current elected or co-opted member or officer of the Borough 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.
- 3.25 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.
- 3.26 This definition would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person. However, the transitional arrangements issued on 8 June allow them to be appointed as long as they are not a member of the Standards Committee on 1 July 2012 and they are appointed before 1 July 2013. In view of the fact that the current composition of the Standards Committee will have no statutory basis with effect from 30 June 2012, there is an argument that the Committee will not exist after this date, therefore all our independent members are automatically eligible. However, for the avoidance of doubt, they have

been advised to tender their resignation if they wish to submit an application for the position of Independent Person.

3.27 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 Borough Council (not just of those present and voting). The advertisement was placed on the Council's website on 18 June 2012 with a closing date of 29 June 2012. The "recruitment panel" referred to in paragraph 3.11 above will shortlist and interview prior to the Council meeting so that Council is in a position to appoint on 11 July. The names of the proposed Independent Person and reserve will be provided to Council to approve the appointment.

3.28 The Independent Person(s) –

- must be consulted by the authority before it makes a finding on an allegation that it has decided to investigate;
- may be consulted by the authority in respect of a standards complaint at any other stage; and
- may be consulted by a member or co-opted member of the Borough Council or of a Parish Council against whom a complaint has been made.

This may cause an issue of conflict, 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 as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint. There may also be circumstances when the Independent Person is unavailable to act, for example due to holiday or illness.

3.29 The Act requires the Council to appoint at least one Independent Person, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a reserve candidate is retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

3.30 In terms of workload, the level of complaints received by the Council historically has not been at such a level that would require a number of Independent Persons to be appointed to share the burden. It is proposed that the Council appoints 1 Independent Person with 1 reserve candidate.

3.31 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. In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited

to attend all meetings of the Standards Committee and Hearings Panels, but would not be a formal member of the Committee or Panel. He/she will need to be available to be consulted by members against whom a complaint has been made.

- 3.32 There is no guidance on setting an appropriate level of remuneration and Councils are taking different approaches. It is proposed that the Independent Person is paid a fixed fee retainer of £500 per year to cover attendance at meetings and telephone calls with a fee of £100 per allegation which is subject to an investigation dealt with. It is proposed that the reserve Independent Person receives a fixed fee retainer of £250 per year with a fee of £100 per allegation which is subject to an investigation dealt with.

Sanctions

- 3.33 Section 34 of the Localism Act 2011 contains criminal sanctions for failing to declare DPIs. The proposed sanctions following a finding of breach of the Code are set out in the arrangements for dealing with complaints and are limited. There will no longer be a power to suspend or disqualify a member. There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no power to do anything 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.

Dispensations

- 3.34 Section 33(1) of the Localism Act 2011 includes provisions for the granting of dispensations where a member has a DPI in a matter and is unable to participate in any discussions or vote at the meeting. Members should be aware that the Borough Council will no longer be responsible for dealing with reports for dispensations from Parish Councillors.
- 3.35 Section 33 provides that a written request for a dispensation must be made to the “proper officer of the authority”. It is proposed that the Council Solicitor and Monitoring Officer be appointed as proper officer for the receipt of a written request for a dispensation.
- 3.36 Under the Localism Act, a dispensation can be granted if having had regard to all the circumstances, it is considered that –
- a) without the dispensation, the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that business;
 - b) 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;

- c) the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - d) that, without a dispensation, no member of the Cabinet would be able to participate on the matter; or
 - e) that the authority considers that it is otherwise appropriate to grant a dispensation.
- 3.37 Whilst 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.
- 3.38 Grounds a) and d) above are pretty objective, so the Standards Committee has agreed to delegate dispensations on these grounds to the Monitoring Officer, thus enabling dispensations to be granted "at the door of the meeting". Grounds b), c) and e) are rather more subjective and so it has been agreed that it is appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee.
- 3.39 It is proposed that Council agrees the delegations recommended by the Standards Committee for dealing with dispensations.

The Register of Members' Interests

- 3.40 The Monitoring Officer is required to establish and 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 Borough Council offices and on the Borough Council's website. The Parish Council also has to publish the register on its website (if it has one).
- 3.41 The Act requires members to register their DPIs, but otherwise it is for the Council to decide what additional interests are to be entered on the register. Members are expected to register those non-pecuniary interests included in the Code of Conduct.
- 3.42 Members should note that historically they have only been required to register interests which relate to them, but the definition of DPIs 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.
- 3.43 The Act requires members to register all DPIs within 28 days of their election. There is no requirement in the Act for a member to complete a register form until the next election and there is no continuing requirement for a member to keep the register up to date. They are only required to notify the Council's Monitoring Officer of any DPI that they have disclosed to a meeting, where that interest is not already entered in the Council's register of interests. The

Standards Committee has sought to plug these gaps and additional requirements to register are imposed in the Code of Conduct. Failure to comply with these additional requirements in the Code would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

- 3.44 In line with the current legislation, there is provision in the Localism Act to allow the Monitoring Officer to remove sensitive interests from the register available for public inspection and published on the website.
- 3.45 The Council Solicitor and Monitoring Officer is liaising with Parish Council Clerks to agree how Parish Council registers will be published in accordance with the Act.

Parish Councils

- 3.46 Each Parish Council is required to adopt its own Code of Conduct. The Standards Committee is keen that Parishes adopt the same Code as the Borough Council as this will assist in uniformity across the borough and will also provide a degree of clarity when dealing with complaints about breach of the Code. A copy of the Code has therefore been provided to Parish Council Clerks for each Parish Council to consider adopting.

Future Actions

- 3.47 Following the Council meeting further work is required to implement the new regime, which will include member training.

4. Resource implications

- 4.1 At the present time, remuneration of the Standards Committee members comes within the scheme of members' allowances, and is determined by the Independent Remuneration Panel. The current allowances suggested by the Independent Remuneration Panel and approved by Council are:

Chairman of Standards Committee	£1,233.00
Co-opted Members (6)	£ 616.56

The current budget for the Standards Committee is therefore £4,932.36. These allowances apply until such time as the Independent Remuneration Panel reconsiders them and make recommendations to Council.

In the event that the Committee agrees that the Standards Committee will include 3 co-opted members, the costs of a new Committee will total £3,082.68 (comprising the following Special Responsibility Allowances: Chairman's allowance of £1,233.00 and allowances for 3 co-opted members of £616.56 x 3.). This will leave £1,849.68 in the current budget to cover remuneration of the Independent Person. It is expected that the costs can be contained within current budget envelope.

5. Recommendation

It is recommended that Council:

- a) unanimously agrees to set up a Standards Committee which is not politically balanced;
- b) agrees that the Standards Committee should consist of 2 representatives from each political group together with 3 co-opted non-voting members (1 Independent and 2 Parish reps);
- c) appoints the members of the Committee;
- d) approves the appointment of the 3 co-opted Members;
- e) agrees that Sub-Committees of the Standards Committee (Hearings Panels) consisting of 1 representative from each political group and 1 co-opted non-voting Member will deal with decisions on allegations following an investigation;
- f) agrees that the Council Solicitor and Monitoring Officer be given delegated power to constitute the membership of the Hearings Panel at any time;
- g) approves the remit of the Standards Committee and Hearings Panel set out in Appendix 1;
- h) approves the Code of Conduct at Appendix 2;
- i) approves the arrangements for dealing with complaints at Appendix 3;
- j) agrees the appointment of the Independent Person and reserve;
- k) agrees that the Independent Person be paid a fixed fee retainer of £500 per year with a fee of £100 per allegation which is subject to an investigation dealt with and the reserve be paid a fixed fee retainer of £250 per year with a fee of £100 per allegation which is subject to an investigation dealt with;
- l) appoints the Council Solicitor and Monitoring Officer as the proper officer for the receipt of a written request for a dispensation;
- m) approves the delegations to the Standards Committee and Council Solicitor and Monitoring Officer relating to dispensations;
- n) requests that the Council Solicitor and Monitoring Officer prepare and maintain a new Register of Interests of Members and co-opted Members to comply with the requirements of the Localism Act and the Council's Code of Conduct;
- o) requests that the Council Solicitor and Monitoring Officer prepare and maintain new Register of Interests of Members and co-opted Members for each Parish Council to comply with the Localism Act and any Code of Conduct adopted by each Parish Council; and
- p) agrees that the Council Solicitor and Monitoring Officer be authorised to make any consequential amendments to the Constitution.