

AGENDA ITEM: 3

SUMMARY



Report for:	Standards Committee
Date of meeting:	19th January 2012
PART:	I
If Part II, reason:	

Title of report:	THE LOCALISM ACT 2011 - CHANGES TO THE STANDARDS REGIME
Contact:	Steven Baker, Assistant Director (Legal, Democratic & Regulatory) Directline: 01442 228229, internal extension: 2229 steve.baker@dacorum.gov.uk
Purpose of report:	To inform Members of the changes to the standards regime brought about by the Localism Act 2011.
Recommendations	The recommendations are set out in the body of the report.
Corporate objectives:	The promotion and maintenance of high standards of conduct by Members of the Council will assist the Council in achieving its priorities of performance excellence and reputation and profile delivery.
Implications: 'Value For Money Implications'	There are financial and efficiency costs to the Council in having to deal with complaints made under the Code of Conduct. There are, therefore, value for money benefits to the Council in striving to ensure that complaints against Members are minimised as far as possible and any complaints that are received are dealt with as cost effectively as possible.
Risk Implications	The risk to the Council in not having in place a robust local standards regime could damage its reputation for good governance and undermine public confidence in the Council as a whole.
Monitoring Officer	This is a report prepared by the Assistant Director (Legal, Democratic & Regulatory) in his capacity as Monitoring Officer.

Consultees:	None
Background papers:	Localism Act 2011

BACKGROUND REPORT

- On 13 January 2011 the Standards Committee considered a report explaining the proposed changes to the standards regime as set out in the Localism Bill as published at the time. The original proposals provided for :
 - The duty to promote and maintain high standards of conduct
 - The abolition of the Standards Board
 - The revocation of the Model Code of Conduct
 - Codes of Conduct becoming optional not mandatory
 - The abolition of statutory standards committees with the option to re-appoint
- Under the early version of the Localism Bill it was proposed that local authorities could, if they wished, have no Code of Conduct at all and have no arrangements in place for dealing with complaints about Members' conduct. However, during the passage of the Bill, the House of Lords proposed a number of amendments which were accepted by the Government at the eleventh hour and were incorporated into the final version of the Bill before it became law on 15 November 2011. As a result of the Lords' amendments every council must adopt a Code of Conduct but has discretion as to what is included in it. In addition, principal councils must have arrangements in place to deal with complaints that a Member has breached the Code of Conduct.

The Changes in Detail

- The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members. The Act itself does not specify a date when the changes come into force but the Government has indicated that the date could be 1st April 2012, but may yet be effective from the Annual Meeting of Council in May 2012.
- The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.
- 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 will be 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
6. The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). We will not have a definition of what constitutes a DPI until the regulations are made, but they are expected to broadly equate to the current prejudicial interests.
 7. The Act also requires the Code to contain appropriate requirements for the registration (and disclosure) of “pecuniary interests and interests other than pecuniary interests”, but it does not define what these shall be. It is therefore for the Council to decide what other pecuniary and non-pecuniary interests should be included in the Code in addition to DPIs.
 8. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider appropriate to include in the Code in respect of pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests under the current Code.
 9. The Act prevents members with a DPI in any matter which is under consideration at a meeting from taking part in any discussion of that matter or taking part in any vote. Under the Act the Council can also choose to adopt a Standing Order requiring members to withdraw from the meeting if they have a DPI. There is no power under the Act which would enable the Council to adopt a Standing Order requiring members to withdraw from a meeting in relation to other pecuniary and non-pecuniary interests.
 10. So the Council’s new Code of Conduct will have to deal with the following matters:-
 - 10.1 General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, it is suggested that the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
 - 10.2 Registration and disclosure of pecuniary interests and non-pecuniary interests – effectively, replacing the provisions on personal interests contained in the current Code. The Act requires that the Code contains “appropriate” provisions for the registration and disclosure of pecuniary and non-pecuniary interests but leaves it up to each authority to decide what these should be. It would seem sensible therefore, as stated above, to simply retain the existing financial and other interests contained in the current Code. Provisions for the registration and disclosure of DPIs will have to be added in later when the regulations have been published.

11. **Recommendation 1**

- (i) **That Cabinet be recommended to instruct the Monitoring Officer to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –**
 - (a) **replicate Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees; and**
 - (b) **require registration and disclosure of interests which would today constitute personal and/or prejudicial interests under the current Code except that there will be no requirement for a member with a prejudicial interest to withdraw from participation. Withdrawal from participation will only apply in relation to Disclosable Pecuniary Interests when these have been introduced by regulations.**
- (ii) **That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer shall amend the adopted Code accordingly and present the amended Code to Council for adoption.**

12. **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 for the Council to appoint a Standards Committee in the future. However, there will still be a need for the Council to deal with standards complaints (see below), so that it may remain convenient to have a Standards Committee. If the Council chooses to appoint a Standards Committee it will be a normal Committee of the Council, without the unique features which were conferred by the previous legislation.

- 13. The composition of the Committee will be governed by proportionality (unless Council votes otherwise with no member voting against). The current restriction that only one member of the Cabinet can sit on the Standards Committee will cease to apply.
- 14. If the Council decides to appoint a Standards Committee it will be made up of Borough Councillors only with no provision for independent members or Parish/Town Council members (unless co-opted in a purely non-voting capacity). The current co-opted independent members will cease to hold office. The Act provides for the appointment of “Independent Persons” (see below), but (somewhat strangely) prevents existing co-opted independent members from serving as Independent Persons for 5 years.
- 15. The Council will continue to have responsibility for dealing with standards complaints against members of Parish/Town Councils, but the current Parish/Town Council representatives will cease to be members of the Standards Committee. The Council can choose whether it wants to co-opt non-voting Parish/Town Council representatives (which could then only make recommendations in respect of Parish/Town Council members).

16. **Recommendation 2**

That Cabinet recommend Council to appoint a Standards Committee comprising [9] elected members of the Borough Council, appointed proportionally. [Only one Cabinet member can be a member of the Standards Committee] or [A Cabinet member cannot be a member of the Standards Committee].

Dealing with Misconduct Complaints

17. Under the Act the Council must have in place “arrangements” under which allegations that a Member (including a Parish/Town Council Member) has breached the Code of Conduct can be investigated and under which decisions on allegations can be made. The “arrangements” will therefore have to set out in some detail the Council’s process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the Code of Conduct.
18. The Act removes the current requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints to officers (for example, the Monitoring Officer). Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it will be necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

Decision whether to investigate a complaint

19. It is suggested that the Council’s arrangements for dealing with standards complaints should contain a robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person (see below) and the ability to refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate for him/her to take a decision on it, for example where he/she has previously advised the member on the matter or the complaint is particularly sensitive.
20. These arrangements should also offer the opportunity for 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 he/she should be accountable for its discharge. For this purpose, it would be appropriate that he/she 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.

Investigations which result in a finding of no breach of the Code

21. 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 Referrals Sub-Committee and the Sub-Committee takes the decision to take

no further action. In practice, it would be reasonable in future to delegate this decision to the Monitoring Officer, but with the power to refer a matter to the Standards Committee if he/she feels appropriate. Summary reports of investigations should be provided to the Independent Person and the Standards Committee for information.

Investigations which result in a finding of a breach of the Code

22. Where a formal investigation finds evidence of failure to comply with the Code of Conduct, the Monitoring Officer should still explore the possibility of a local resolution so as to avoid the necessity of a local hearing. For example, the complainant may be satisfied by recognition of fault and an apology or other remedial action. In cases where it is possible to resolve the complaint without the need for a hearing a summary report for information should be provided to the Independent Person and the Standards Committee.
23. 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 Standards Committee to hold a hearing. The Committee can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

Sanctions

24. The Act does not give the Council 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 Council can take in respect of the member is limited to issuing a reprimand and such other actions which are permitted under general local government law. This might include the following –

Reporting its findings to Council [*or to the Parish/Town Council*] for information;

Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) 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 recommend that the Parish/Town Council*] arrange training for the member;

Removing [*or recommend to the Parish/Town 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/Town Council*];

Withdrawing [*or recommend to the Parish/Town 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 recommend that the Parish/Town 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.

25. There is a particular difficulty in respect of Parish/Town Councils, as the Act gives the Council no power to do any more in respect of a Parish/Town Council member than make a recommendation to the Parish/Town Council on action to be taken in respect of the member. Parish/Town Councils will be under no obligation to accept any such recommendation.

26. **Recommendation 3**

That Cabinet recommend to Council for approval the following arrangements for dealing with standards complaints -

- a. **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**
- b. **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. He/she be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he/she be given discretion to refer decisions on investigation to the Standards Committee where he/she feels that it would not be appropriate for him/her to take the decision, and to report to Standards Committee on the discharge of this function;**
- c. **Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed 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;**
- d. **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 the Standards Committee. Where such local resolution is not appropriate or not possible, he/she is to report the investigation findings to the Standards Committee (or a Hearings Sub-Committee) for local hearing;**
- e. **That Council delegate to the Standards Committee (or a Hearings Sub-Committee) such of its powers as can be delegated to take action in respect of a member who is found following a hearing to have failed to comply with the Code of Conduct, such actions to include –**

- Issuing a reprimand;
- Reporting its findings to Council *[or to the Parish/Town Council]* for information;
- Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) 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 recommend that the Parish/Town Council]* arrange training for the member;
- Removing *[or recommend to the Parish/Town 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/Town Council]*;
- Withdrawing *[or recommend to the Parish/Town 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 recommend that the Parish/Town 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.

Independent Persons

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

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

He/she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council or of any of the Parish/Town Councils within its area;

He/she is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Council or of any of the Parish/Town Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or

He/she is a relative (as defined) or close friend of a current elected or co-opted member or officer of the Council or any Parish/Town Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

Functions of the Independent Person

29. The functions of the Independent Person are –

- They must be consulted by the Council before it makes any decision on a complaint which has been investigated.
- They may be consulted by the Council in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the Borough Council or of a Parish/Town Council against whom a complaint has been made.

Remuneration for the Independent Person

30. As the Independent Person is not a member of the Council 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. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

31. **Recommendation 4**

- a **That the Monitoring Officer advertise a vacancy of the appointment of 3 Independent Persons**
- b. **That a Sub-Committee comprising the Chair and three other members of Standards Committee be set up to set the allowances and expenses for the Independent Persons, to short-list and interview candidates, and to make a recommendation to Council for appointment.**

The Register of Members' Interests

32. Under the Act, the Monitoring Officer is required to maintain a register of members' 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/Town Councils, which also have to be open for inspection at the Council offices and published on the Parish/Town Council websites if they have one.

33. Each elected or co-opted member must register all DPs 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.

34. 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.
35. There is no continuing requirement for a member to keep the register up to date in relation to DPIs, except on re-election or re-appointment, but it is likely that members will register new DPIs 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.

Sensitive interests

36. The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
37. 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".
38. 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.

Dispensations

39. The provisions on dispensations are greatly changed by the Act. In future, it will be much easier to obtain a dispensation and the power to grant a dispensation can be delegated to the Monitoring Officer. This will enable dispensations to be granted at short notice if, for example, business cannot be transacted at a meeting because a majority of members are conflicted out leaving the meeting inquorate.

Transitional Arrangements

40. Regulations under the Localism Act will provide for –
- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
 - b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
 - c. removal of the power of suspension from the start of the transitional period; and
 - d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.