

TITLE OF REPORT: CHANGES TO THE STANDARDS REGIME

REPORT OF THE MONITORING OFFICER

1. SUMMARY

This report considers the changes being introduced to the Standards Regime by the Localism Act and outlines recommended next steps.

2. FORWARD PLAN

This matter is not a key decision and therefore is not included in the forward plan.

3. BACKGROUND

3.1 The Local Government Act 2000 introduced a framework relating to standards of members conduct. This included the adoption of a Members Code of Conduct and the creation of a statutory Standards Committee. Regulations came into force on 8 May 2008 that required the Council's Standards Committee to take on the role of assessment of complaints locally.

3.2 The Localism Act 2011 "The Act" makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. It abolishes the current Standards regime including Standards for England, statutory Standards Committees, the ten General Principles and the model Code of Conduct. The date for implementation of these changes was to have been the 1st April 2012 however other than the abolition of the Standards Board for England on the 31st March 2012, the remaining local elements of the current regime, including statutory standards committees will be abolished on the 1st July 2012. This is subject to the publication of outstanding Regulations.

3.3 This Report describes the changes and recommends the actions required for the Council to implement the new regime.

3.4 There remains a statutory obligation on the Council and the Monitoring Officer to promote high standards of conduct.

3.5 Appendix 1 contains detailed background on other relevant legal considerations resulting from the Act that remain current and relevant outside of the changes to the Standards Framework.

4. ISSUES

4.1 There are a number of issues listed that now need to be considered and upon which resolutions will ultimately be required by Full Council. The Report contains recommendations on each of them. The issues are considered in detail below.

- Standards Committee (para 4.2)
- Code of Conduct (para 4.3)
- Arrangements (para 4.4)
- Independent Person (para 4.5)
- Register of Interests (para 4.6)
- Disclosure of Interests and Withdrawal from Meetings (para 4.7)
- Dispensations (para 4.8)
- Parish Councils (para 4.9)

4.2 Standards Committee

4.2.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will as from the 1st July 2012 be no statutory requirement for 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 expedient to have a Standards Committee, it will be a normal Committee of Council established under s.102 Local Government Act 1972, without the unique features conferred by the previous legislation. This has a number of implications detailed in the following paragraphs:

4.2.1.1 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;

4.2.1.2 The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (see paragraph 4.5 below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.

4.2.2 District Councils will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives of the Standards Committee cease to hold office.

4.2.3 The Council can choose whether it wants to continue to involve Parish Council representatives and if so how many Parish Council representatives it wants. The choice is between:

- establishing a Standards Committee as a Committee of the District Council with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or
- establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee). This option is considered further at paragraph 4.4.9.3.

4.2.4 Any Standards Committee will be need to be delegated all requisite matters by Full Council. This will need to be reflected in the committee's terms of reference within the Constitution. A draft terms of reference is attached at Appendix 2. In addition a draft Procedure for a Standards Sub Committee is attached at Appendix 3.

4.2.5 The Monitoring Officer advises that it is expedient to retain a Standards Committee. However consideration could be given to the relevant matters instead being delegated to another existing member Committee.

- 4.2.6 The Standards Committee is advised to: (see recommendation 9.1)
- Recommend to Council the retention of a Standards Committee with a sub committee and that the Standards Committee be delegated appropriate powers in line with the draft Terms of Reference attached at Appendix 2.
 - Consider the extent to which Parish Councils should be involved in any Standards Committee
 - Recommend to Council that the Procedure for the Standards Sub Committee attached at Appendix 3 be adopted.

4.3 Code of conduct

4.3.1 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 model Code of Conduct. However the Standards Committee may wish to consider whether members should nevertheless be asked to give an undertaking.

4.3.2 The Council will however be required to adopt a new Code of Conduct governing elected and co-opted member’s conduct when acting in that capacity. The Council’s new Code of Conduct must, viewed as a whole, be consistent with seven new principles (“the Nolan Principles”). The old and new principles are set out below for comparison and information.

The “Old” General Principles (From the Relevant Authorities (General Principles) Order 2001	The New Principles from the Localism Act clause 28(1)
Selflessness	Selflessness
Honesty and Integrity	Integrity
	Honesty
Objectivity	Objectivity
Accountability	Accountability
Openness	Openness
Leadership.	Leadership.
Personal Judgment	
Respect for others	
Duty to uphold the law	
Stewardship	

4.3.3 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven Nolan Principles. However, regulations yet to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (“DPIs”), broadly equating to the current prejudicial interests.

- 4.3.4 It is not yet possible to draft Code provisions which reflect the definition of DPIs which will appear in the Regulations. However it might be possible to give an indicative view of what the Council might consider could be appropriate to include in the Code in respect of the totality of all interests, including DPIs other pecuniary interests and non-pecuniary interests.
- 4.3.5 Two alternative model Codes of conduct have been produced by the Local Government Association (“LGA”) who have been unable to settle on one recommendation to Councils. Two model Codes of Conduct have therefore been produced for Council’s to use if they wish to. These are attached at Appendix 4 for discussion and are labelled Option 1 and Option 2. The drafts attached at Appendix 4 are not the final versions produced by the LGA as these are not yet available, however they are understood to be close to the final versions. The Committee will note that Option 1 is incomplete, and this links to the Regulations that are still awaited. The Committee will also note that Option 2 is very light in terms of detail. The Monitoring Officer has significant concerns as to the appropriateness and usability of this version. It is anticipated that Option 2 would make complaints very hard to dismiss and make the administration of the complaints process time-consuming and costly. ACSeS have stated that they are not recommending Option 2 to their members. At this stage the Monitoring Officer therefore recommends Option 1 to the Committee.
- 4.3.6 Attached for information at Appendix 5 is an article from the Local Government Chronicle on 8 March 2012 that further discusses and analyses the two draft Model Codes of Conduct that are before the Committee.
- 4.3.7 The Standards Committee may also wish to consider the approach being taken by the rest of the County and other Council’s regionally. The Monitoring Officer and deputy Monitoring Officer have been meeting with other Heads of Legal across the County and regionally. At the County level, there has been discussion about the advantages of proceeding with one Code of Conduct for uniformity across the County, especially to assist members who are both District and County Members. The County Council have informally indicated a preference for Option 1.
- 4.3.8 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.
- 4.3.9 The Standards Committee is advised to: (see recommendation 9.2)
- Consider whether members should still be asked to provide an undertaking to comply with the Council’s code of conduct.
 - Consider and comment upon the draft Model Codes attached at Appendix 4, and make a recommendation to Council.
 - The Standards Committee recommend to Council that when the DPI Regulations are published, the Monitoring Officer, after consultation with the Chair of the Standards Committee, add to that draft Code of Conduct, provisions which are considered appropriate for the registration and disclosure of interests other than DPI’s.

4.4 **Arrangements**

- 4.4.1 Having adopted a Code of Conduct, relevant authorities (other than Parish Councils) must have in place “Arrangements” to deal with complaints of a breach of a Code. This must include:

- Arrangements under which allegations can be investigated, and
 - Arrangements under which decisions on allegations can be made
- 4.4.2 Any breach of the Code can only be dealt with under the approved Arrangements and decisions can be delegated to Committees, Sub Committees or Officers.
- 4.4.3 The Arrangements need to set out in 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 Code of Conduct. The Act repeals the requirements for separate Assessment, Review and Hearings 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 gives the Standards Committee or 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. Draft Arrangements are set out at Appendix 6 for discussion. As part of that, any complaint would need to be in writing and an outline proforma complaint form is also included within Appendix 6.
- 4.4.4 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. This needs to be subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it. A relevant example would be where the Independent Person has previously advised the member on the matter or the complaint is particularly sensitive. Experience of complaints received at NHDC are frequently that findings of no further action have been made by the Assessment Sub Committee and Review Sub Committee. It therefore seems appropriate to promote a more efficient system that enables groundless complaints to be more expediently dealt with.
- 4.4.5 These Arrangements would 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 s/he should be accountable for its discharge.
- 4.4.6 For this purpose it would be appropriate that the Monitoring Officer makes a report to the Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committees attention areas where training or other action might avoid further complaints, and keep the Committee advised on progress on any investigations and costs.
- 4.4.7 *“No Breach of the Code” finding on investigation*
- 4.4.7.1 Where a formal investigation finds no evidence of a 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 to delegate this decision to the Monitoring Officer, but with the power to refer a matter to the Standards Committee if s/he considers it appropriate.
- 4.4.7.2 It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him to get an overview of current issues and pressures and that the Monitoring Officer provide a summary report of each such investigation to the Standards Committee for information.

4.4.8 “Breach of the Code” finding on investigation

4.4.8.1 Where a formal investigation finds evidence of a failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, and avoid the necessity for 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 to this as a resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to a summary report for information to the Standards Committee.

4.4.8.2 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 (in practice a Hearings Panel constituted as a Sub-Committee of the 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 Sub-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. A draft procedure is attached at Appendix 3.

4.4.9 Action in response to a Hearing finding of a failure to comply with the Code

4.4.9.1 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 from 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:

- Reporting its findings to Council (*or to the Parish Council*) for information;
- 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;
- 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 Council*) arrange training for the member;
- Removing (*or recommend 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 recommend 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 recommend 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.

4.4.9.2 The draft Arrangements attached at Appendix 5 refer to the actions that the Standards Committee might take in response to a finding of a failure to comply

with the Code of Conduct. However further consideration is being given to these following expert legal opinion distributed by ACSeS.

- 4.4.9.3 The Act creates a particular difficulty in respect of Parish Councils, as it does not give the Standards Committee any 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. The only way round this would be to constitute the Standards Committee and Sub-Committee as a Joint Committee and Joint Sub-Committees with the Parish Councils and seek the delegation of powers from Parish Councils to the Sub-Committee. The Sub-Committee can then effectively take decisions on any actions on behalf of the particular Parish Council. However for this to be applicable, it would need to be a joint committee with all Parish Councils. This would become incredibly unwieldy and unworkable.

4.4.10 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
- taken improperly or in blatant disregard of agreed process
- sought to impose a sanction which the authority had no power to impose.

4.4.11 The Standards Committee is advised to: (see recommendation 9.3)

- Consider and comments upon the draft Arrangements attached at Appendix 6.
- Recommend to Council that the MO be delegated the following:
 - Appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct.
 - the initial decision on whether a complaint requires investigation subject to consultation with the Independent Person
 - To arrange a formal investigation as appropriate
 - Power to seek to resolve a complaint informally prior to a decision on whether the complaint merits formal investigation
 - The decision to take no further action where a formal investigation finds no evidence of a failure to comply with the Code of Conduct, subject to the MO providing a copy of the Report and its findings to the complainant and the Member and the Independent Person, and reporting the findings to the Standards Committee for information. In the event that the MO decides to take no further action that the matter then be closed.
 - Power to seek an informal resolution following a formal investigation finding of breach of the Code subject to consultation with the Independent Person, a summary report for information to the Standards Committee and where the complainant is satisfied with the outcome.
 - Where informal resolution is inappropriate or not possible following a formal investigation finding of breach of the Code, power to report the investigation findings to a sub committee of the Standards Committee for local hearing.
 - Power to refer any matter (including complaints) otherwise delegated to the Monitoring Officer to the Standards Committee where s/he feels it appropriate to do so.
- Recommend to Council that the Monitoring Officer be required to:
 - make regular reports to the Standards Committee regarding the number and nature of complaints received and draw to the Committees attention areas

where training or other action might avoid further complaints, and keep the Committee advised on progress on any investigations and related costs

- provide copies of all investigation reports to the Independent Person
- provide a summary report of every investigation to the Standards Committee for information.

4.5 **Independent Person**

4.5.1 The “Arrangements” to be adopted must include provision for the appointment by the Council of at least one Independent Person (“IP”). They must be appointed by advertisement and application and appointed by a positive vote of a majority of all members of the District Council (not just of those present and voting).

4.5.2 The Act sets out limitations on who can be an IP, however most significantly, a person cannot be appointed as an IP if they have within the past five years been a co-opted voting member of a committee of the authority. This prevents the current Chair or vice chair of the Council’s Standards Committee from taking the role of Independent Person. There may be further guidance or transitional arrangements forthcoming, however that is not yet clear.

4.5.3 The functions of the IP 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 resolution of the complaint, or on any finding of a 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;
- 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.

These requirements could cause some problems, as it would be inappropriate for an IP 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.

4.5.4 *Remuneration*

4.5.4.1 An Independent Person can be paid allowances and expenses. 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 the Standards Committee, the role of the Independent Person is likely to be significantly less onerous. S/he is likely to be invited to attend all meetings of the Standards Committee and Sub-Committee, but not to be a formal member of the Committee or Sub-Committee (s/he could be co-opted as a non-voting member but cannot chair as the Chair must exercise a second or casting vote). S/he will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where s/he has been so consulted, s/he would be unable to be involved in the determination of that complaint.

4.5.4.2 This report suggests that the Independent Person also be involved in the resolution of complaints and in the grant of dispensations.

4.5.5 *How many Independent Persons?*

4.5.5.1 The Act gives discretion to appoint one or more IP, but provides that each IP 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 couple of reserve candidates are 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 is on holiday or unwell.

4.5.6 The Standards Committee is advised to consider: (see recommendation 9.4)

- Recommending to Council that the Monitoring Officer in consultation with the Chair of Standards Committee and the advice of the Corporate Manager of Human Resources be authorised to set the initial allowances and expenses for the IP and any reserve IP's, and this function subsequently be delegated to the Standards Committee.
- Recommending to Council that the Monitoring Officer advertise a vacancy of one Independent Person and one reserve IP.
- That the Monitoring Officer and Director of Finance, Policy and Governance be delegated to short list and interview candidates and following recommendation to the Standards Committee, that Committee be delegated to confirm an appointment

4.6 **Register of Member's Interests**

4.6.1 The Localism Act abolishes personal and prejudicial interests. Instead Regulations are to introduce detail regarding "disclosable pecuniary interests". We do not yet know what these will be. The Monitoring Officer is required to establish a register of members' interests for each authority (to include parish councils within their area). This must be available for inspection and on the Council's website.

4.6.2 The Register must be maintained at the District Council's offices and on the authority's website. For parish councils, the Council's Monitoring Officer must ensure that every parish council's register is available for inspection within the principal authority's, rather than the parish council's area. In addition, if the parish council has a website, the parish council must ensure that the register is accessible on that website. This is likely to be a considerable administrative task for the Monitoring Officer given the number of Parish and Town Councils in North Herts (35), and there is no provision for recovery of any costs from parish councils.

4.6.3 Every elected or co-opted member is required to notify the Monitoring Officer within 28 days of being elected or co-opted onto the authority of all current "disclosable pecuniary interests" of which they are aware, and update the register within 28 days of being re-elected or re-appointed. However, there is no ongoing or continuing duty to update the register due to a change of circumstances, other than re-election. However if Members choose to update their register it would avoid the need for declarations in a meeting, and would clearly align with good practice. The Act extends the duty to register to include not just the member's own interests, but also those of a spouse, civil partner, or someone living with the member in a similar capacity.

4.6.4 Failure to register any such interest, to do so within 28 days of election or co-option, or the provision of misleading information on registration without reasonable excuse will be a criminal offence, potentially carrying a Scale 5 fine and/or disqualification from being a councillor for up to five years.

- 4.6.5 The Act also provides that an authority's Code of Conduct must require registration of non-disclosable pecuniary interests and non-pecuniary interests, for which no definition is provided. It is expected in the outstanding Regulations. So, it would appear that each authority must include in its Code provisions for the registration (and disclosure) of some non-disclosable pecuniary interests and some non-pecuniary interests, but has discretion as to how far it goes in defining such interests for this purpose. 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 a failure to comply with the Code.
- 4.6.6 The Standards Committee is advised to recommend to Council that the Monitoring Officer: (see recommendation 9.5)
- Prepare and maintain a new register of members interests to comply with the statutory requirements and the Council's Code of Conduct, and to ensure the same is available for inspection.
 - Prepare and maintain new registers of Member's interests for each Parish Council to comply with the statutory requirements and any Code of Conduct adopted by each Parish Council, and to ensure the same is available for inspection.

4.7 **Disclosure of Interests and Withdrawal from Meetings**

- 4.7.1 The requirement for disclosure of interests at meetings applies to the same range of interests as the initial requirement to register referred to at paragraph 4.6.3 above, plus any other interests which the authority's Code requires to be disclosed in addition to the DPI's. However, the duty to disclose only arises if the member is aware of the interest and it is not registered or pending registration. There is only a requirement to disclose the interest rather than the "existence and nature" of the interest as is the case under the current regime.
- 4.7.2 The duty to disclose arises if the member attends the meeting, as opposed to the present code requirement to disclose before the start of consideration of the matter in which the member has an interest. This would appear to mean that the member cannot avoid the need to disclose merely by withdrawing during that part of the meeting when the particular item of business is considered.
- 4.7.3 Failure to disclose a DPI at a meeting (that is not already disclosed on the Register) is also made a criminal offence. Where an interest is registered, or in the process of being registered, there is no requirement to disclose it to any meeting.
- 4.7.4 If a member has a DPI in such a matter, he/she is simply barred from participating in discussion or voting on the matter at the meeting, or (as a single member) taking any steps in respect of the matter other than referring it to someone else for determination. The sole exception to this exclusion arises as a result of a dispensation. Therefore the right of a councillor to speak as a member of the public and then depart for the consideration of the matter as currently exists, appears to have been removed. However, some interesting debate about what constitutes "discussion of the matter" is anticipated. Participation in the discussion of the matter, or taking steps in respect of the matter, in the face of these prohibitions is also made a criminal offence.
- 4.7.5 The current requirement for the member to withdraw from the meeting room is not set out on the face of the statute, but the statute provides that it may be dealt with in the authority's standing orders. Indeed, it is left open to authorities to make no provision for such members to withdraw. A Standing Order could equate to the current Code of

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

- 4.7.6 The provisions introduced in the 2008 Code revision are re-enacted, enabling a member to ask the Monitoring Officer to exclude from the public register any details of sensitive interests, which, if disclosed, might lead to a threat of violence or intimidation to the member or any person in the member's household. This allows the member merely to recite at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest. The scope of sensitive interests is slightly extended, from the member and members of his/her household, to cover "any person connected with the member".
- 4.7.7 The Act provides that where a single member (e.g. a Portfolio Holder acting under delegated powers) was intending to decide a matter alone, and becomes aware of the existence of a DPI, it must be registered with the MO within 28 days and the decision must be referred to another person or body to take the decision.
- 4.7.8 The Standards Committee is advised to: (see recommendation 9.6)
- consider whether it wishes to adopt a Standing Order requiring members with a DPI to withdraw from the meeting room

4.8 **Dispensations**

- 4.8.1 There are provisions enabling dispensations to be granted. The grounds on which a dispensation may be granted are extended, and the power to grant a dispensation can be delegated, for example to the Monitoring Officer, enabling dispensations to be granted at relatively short notice. Any grant of a dispensation must specify the duration.
- 4.8.2 The Standards Committee is advised to: (see recommendation 9.7)
- recommend to Council that power to grant dispensations be delegated to the Monitoring Officer with an appeal to the Standards Committee

4.9 **Parish Councils**

- 4.9.1 Parish Councils must also adopt a Code of Conduct and work with the MO to enable the MO to publish the register of interests for the relevant Parish.
- 4.9.2 The Standards Committee is advised to instruct the Monitoring Officer to: (see recommendation 9.8)
- Endorse the Monitoring Officer writing to all Parish Councils to ensure they are aware of the changes to the Standards regime as a result of the Localism Act, and the steps they are required to take such that are known at present.
 - Offer training to Parish Clerks and Parish Cllrs on the registration requirements and the requirements of the new Standards framework more generally.

5. **LEGAL IMPLICATIONS**

- 5.1 Section 37 Local Government Act 2000 requires the Council to have in place a constitution and to keep that constitution under review. This Report concerns

constitutional amendments in the form of changes to the local standards framework and are matters for full Council to consider and decide.

- 5.2 This Report is presented to the Standards Committee in accordance with their existing Terms of Reference.
- 5.3 Section 27 of the Localism Act states that there remains a duty on the Council and the Monitoring Officer to promote high standards of conduct.
- 5.4 The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked as will the Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities.
- 5.5 Section 102(3) and (4) of the Local Government Act 1972 enables an authority to appoint co-opted members to a new Standards Committee, but Section 13 of the Local Government and Housing Act 1989 would mean that any such co-opted Members were non-voting, unless the Standards Committee was merely advisory, i.e. that it made recommendations to Council.
- 5.6 The legal implications are otherwise contained throughout the Report.

6. FINANCIAL AND RISK IMPLICATIONS

There will be some financial implications in terms of remuneration for the Independent Person, although this is currently included within the Council's budget.

The Council needs to ensure it complies with its statutory obligations as set out in the Localism Act 2011.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

None arising from this report

9. RECOMMENDATIONS

9.1 The Standards Committee is advised to:

- 9.1.1 Recommend to Council the retention of a Standards Committee with a sub committee and that the Standards Committee be delegated appropriate powers in line with the draft Terms of Reference attached at Appendix 2.
- 9.1.2 Consider the extent to which Parish Councils should be involved in any Standards Committee
- 9.1.3 Co-opt the current Chair of the Standards committee as a member
- 9.1.4 Recommend to Council that the Procedure for the Standards Sub Committee attached at Appendix 3 be adopted.

9.2 The Standards Committee is advised to:

- 9.2.1 Consider whether members should still be asked to provide an undertaking to comply with the Council's code of conduct.
- 9.2.2 Consider and comment upon the draft Model Codes attached at Appendix 4, and make a recommendation to Council.
- 9.2.3 The Standards Committee recommend to Council that when the DPI Regulations are published, the Monitoring Officer, after consultation with the Chair of the Standards Committee and the Chair of the Council, add to that draft Code of Conduct, provisions which are considered appropriate for the registration and disclosure of interests other than DPI's.

9.3 The Standards Committee is advised to:

- 9.3.1 Consider and comments upon the draft Arrangements attached at Appendix 6.
- 9.3.2 Recommend to Council that the MO be delegated the following:
 - Appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct.
 - the initial decision on whether a complaint requires investigation subject to consultation with the Independent Person
 - To arrange a formal investigation as appropriate
 - Power to seek to resolve a complaint informally prior to a decision on whether the complaint merits formal investigation
 - The decision to take no further action where a formal investigation finds no evidence of a failure to comply with the Code of Conduct, subject to the MO providing a copy of the Report and its findings to the complainant and the Member and the Independent Person, and reporting the findings to the Standards Committee for information. In the event that the MO decides to take no further action that the matter then be closed.
 - Power to seek an informal resolution following a formal investigation finding of breach of the Code subject to consultation with the Independent Person, a summary report for information to the Standards Committee and where the complainant is satisfied with the outcome.
 - Where informal resolution is inappropriate or not possible following a formal investigation finding of breach of the Code, power to report the investigation findings to a sub committee of the Standards Committee for local hearing.
 - Power to refer any matter (including complaints) otherwise delegated to the Monitoring Officer to the Standards Committee where s/he feels it appropriate to do so.

9.3.3 Recommend to Council that the Monitoring Officer be required to:

- make regular reports to the Standards Committee regarding the number and nature of complaints received and draw to the Committees attention areas where training or other action might avoid further complaints, and keep the Committee advised on progress on any investigations and related costs
- provide copies of all investigation reports to the Independent Person
- provide a summary report of every investigation to the Standards Committee for information.

9.4 The Standards Committee is advised to consider:

9.4.1 Recommending to Council that the Monitoring Officer in consultation with the Chair of Standards Committee and the advice of the Corporate Manager of Human Resources be authorised to set the initial allowances and expenses for the IP and any reserve IP's, and this function subsequently be delegated to the Standards Committee.

9.4.2 Recommending to Council that the Monitoring Officer advertise a vacancy of one Independent Person and one reserve IP.

9.4.3 That the Monitoring Officer and Director of Finance, Policy and Governance be delegated to short list and interview candidates and following recommendation to the Standards Committee that Committee be delegated to confirm an appointment.

9.5 The Standards Committee is advised to recommend to Council that the Monitoring Officer:

9.5.1 Prepare and maintain a new register of members interests to comply with the statutory requirements and the Council's Code of Conduct, and to ensure the same is available for inspection.

9.5.2 Prepare and maintain new registers of Member's interests for each Parish Council to comply with the statutory requirements and any Code of Conduct adopted by each Parish Council, and to ensure the same is available for inspection.

9.6 The Standards Committee is advised to consider whether it wishes to adopt a Standing Order requiring members with a DPI to withdraw from the meeting room (see recommendation 9.1)

9.7 The Standards Committee is advised to recommend to Council that power to grant dispensations be delegated to the Monitoring Officer with an appeal to the Standards Committee

9.8 The Standards Committee is advised to instruct the Monitoring Officer to:

9.8.1 Endorse the Monitoring Officer writing to all Parish Councils to ensure they are aware of the changes to the Standards regime as a result of the Localism Act, and the steps they are required to take such that are known at present.

9.8.2 Offer training to Parish Clerks and Parish Cllrs on the registration requirements and the requirements of the new Standards framework more generally.

10. REASONS FOR RECOMMENDATIONS

To ensure the Council meets its statutory obligations and continues to improve its working practices

11. ALTERNATIVE OPTIONS CONSIDERED

None.

12. APPENDICES

Appendix 1: What else remains in addition to the Localism Act?
Appendix 2: Draft Terms of Reference for Standards committee
Appendix 3: Draft Procedure for Standards Sub Committee
Appendix 4: Draft Model Codes of Conduct (x2)
Appendix 5: Article from Local Government Chronicle dated 8 March 2012
Appendix 6: Draft Arrangements

13. CONTACT OFFICERS

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14. BACKGROUND PAPERS

None.

Appendix 1

What else remains in addition to the Localism Act?

1.1 There will remain a number of relevant items that will continue to sit alongside the new Standards regime.

1.2 Local Protocols

The Council has adopted a number of local protocols. These include:

- A Member and Officer Protocol that sets out the way in which members and officers will engage with each other.
- A Planning and Lobbying Protocol
- Councillors use of IT
- Gifts and Hospitality

It may be timely to review any that have not been recently reviewed.

1.3 Recourse to the Press/Ballot Box

The electorate has the power of the ballot box by which it can express concern about matters of conduct if it so wishes. There is also the ability for matters of discourse to be referred to the Press.

1.4 Criminal Law

There is existing criminal law that is/may be relevant.

- The Bribery Act 2010 came into force on 1 July 2011. The Act includes two general offences involving, firstly, the offering or paying of bribes (“active” bribery) and secondly, the request or receipt of bribes (“passive” bribery). The offences carry criminal penalties for individuals and organisations. The Council has an adopted Policy in relation to this approved by Council on 14 June 2011.
- Theft by false accounting.
- Misconduct in public office. This may be relevant if a public office holder acts in breach of the duties of their position. Generally any breach of the duties will have to be significant and serious.
- As referred to above, the Localism Act introduces a new criminal sanction for deliberate or wilful failure to register or declare a personal interest in a matter. However it is as yet unclear how effectively that will be enforced.
- A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain for any other reason, would be committing an offence under the Fraud Act 2006. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both.
- There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, The Political Parties, Elections and Referendums Act 2000 and The Electoral Administration Act 2006.
- A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of Section 80 of the Local Government Act 1972.

1.5 Civil Liability

There is existing relevant civil law (both statutory and case law) that exists.

- Statutory Immunity (Section 265 Public Health Act 1875 amended by s39 Local Government Misc Provisions Act 1976):
The Council and all Councillors owe a fiduciary duty to apply Council assets in the public interest. Ordinarily a Member takes a decision as a Councillor not as a private individual, this means that a Member is not individually liable. The statutory immunity from personal liability does not apply to a Councillor who goes outside their powers and is therefore acting as a private individual, acts in bad faith, for personal gain or out of malice.
- Misfeasance in public office (actionable as a civil tort).
- Case law (Moore v Bude Stratton TC) held that the Council had liability for the conduct of its members in relation to a Council Officer alleging constructive dismissal.
- Defamation is the overall term which covers libel (written defamation) and slander (verbal defamation). Essentially defamation covers unjust attacks to reputation and a successful claim can recover damages and/or obtain an injunction preventing future publication of the same or similar statements. To prove defamation the statement must be defamatory, the victim must be identifiable from what is published and the allegations must have been published to at least one other individual.
- Equalities and discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality. Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

1.6 Power of Self regulation

The power of a Council to take action in order to regulate itself and enable it to carry out its functions was confirmed in a Court of Appeal case in 2001. (R v Broadland DC ex p Lashley). This is a power to take such administrative action as may be required to protect the interests of the Council and the people that it serves, it would need to be necessary in order to protect the Council's ability to continue to provide efficient and effective services to citizens or to protect its credibility. Therefore it would be more appropriate if there is a risk of recurrence of a particular behaviour, that was current. A lengthy delay would not support the argument that action was necessary. Any action can not override the democratic election of a Member or their rights as a councillor. The options are:

- The Council could make a public statement of disapproval
- Prevent access to particular facilities otherwise provided by the Council
- Exclusion from Council Offices
- Limiting access to Officers
- Removal from representation on outside bodies
- Removal from positions of responsibility within the Council
- Exclusion from meetings within the discretion of the chair if there is disruption

The Council must act fairly in exercising this power of self regulation and any councillor affected would need to be offered the opportunity of a hearing. Powers of self regulation would rest with full Council unless this was delegated.

1.7 Impact on decision making

The Council and individual members must consider principles of good and fair decision making. Aside from considerations around the Code of Conduct, there have always been additional considerations regarding the potential for bias or predetermination in relation to a decision. Case law makes clear that a predisposition to a particular outcome is permissible, however predetermination (akin to a closed mind) is inappropriate and could lead to a Council decision being challenged by way of judicial review. It had been indicated that the Localism Act would serve to clarify some of the lack of clarity that has developed as a result of case law, however it is currently unclear the extent to which the detailed legal drafting contained within the Act does actually give effect to this stated intention. Further case law testing the new legislation may be required to assist with clarification.

1.8 Ombudsman

The Local Government Ombudsman will continue to exist. It considers maladministration which is not currently defined in law but the Local Government Ombudsman currently defines its' mandate as follows: *"We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you"*. Individual or collective actions or failings of councillors may amount to maladministration. Conventionally the Ombudsman will not deal with a complaint where there are other avenues for a complainant.