

**TITLE OF REPORT: CHANGES TO THE STANDARDS REGIME**

REPORT OF THE ACTING MONITORING OFFICER

**1 SUMMARY**

This report considers the changes being introduced to the Standards Regime by the Localism Act and the final matters to be approved by Council.

**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 Members. It abolishes the current Standards regime including Standards for England (formally abolished on 31 March 2012), statutory Standards Committees, the ten General Principles and the model Code of Conduct. The date for implementation of the changes is now prescribed by the Commencement Order No 6 (made on 6 June 2012) as 'on or after' 1 July 2012
- 3.3 This Report describes the further changes and recommendations 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 Full Council made a number of decisions on the new Standards regime at Annual Council on 17 May 2012. Due to uncertainty caused by the implementation of the relevant sections of the Localism Act a number of matters were not able to be resolved in time for Annual Council.

**4 ISSUES****Code of Conduct*****Proposed Approach***

- 4.1 Council on 17 May 2012 were informed that the LGA had produced a "Template" Code of Conduct and that the DCLG had produced an "Illustrative" Code of Conduct. The Monitoring Officer is now aware of at least 4 different approaches to the Code of

Conduct within Hertfordshire at district and county level. The parishes have received a draft code from NALC and it is likely many will choose this code. There will therefore be no consistency locally, which is of course within the spirit of the legislation.

- 4.2 It should be noted that neither template is a complete code of conduct and would require work to make into one (they cover only the member's general conduct and not the interests aspects). The Monitoring Officer does not recommend either the DCLG or LGA approach as it is considered neither Code is enforceable as they are too subjective. Bevan Brittan LLP have gone further in their criticism stating "our view is that both these Codes are seriously flawed, lacking in clarity, very weak on confidentiality, respect and bullying, and open to political abuse now that Standards Committees no longer contain Independent Members and have an Independent Member Chairman."
- 4.3 It is therefore suggested that Council essentially re-adopts the existing Code of Conduct, with the section on interests being changed to deal with Disclosable Pecuniary Interests (DPIs), other types of interests, and other minor consequential changes as a result of the new standards regime. This has the advantage of providing a code of conduct that Members, officers and the public are already familiar with, and would therefore not need to be trained on (although refresher training can always be provided and training will be provided on the new aspects such as Disclosable Pecuniary Interests). The proposed, updated, Code of Conduct is attached at Appendix A.

#### ***Disclosable Pecuniary Interests***

- 4.4 The definitions of Personal and Prejudicial Interests under the previous Model Code are replaced by a new definition of Disclosable Pecuniary Interests (DPIs) under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which apply to all local authorities in England. The definition of DPI has been set out in full in Part 2 of the proposed Code of Conduct. No definition has been provided for Pecuniary Interests and non-Pecuniary Interests and therefore the Council is able to choose what, if any, circumstances should be covered by these terms.
- 4.5 Where a member has a DPI, it is a criminal offence to fail to register that interest, to fail to disclose it at a meeting unless it is already registered, or to participate on a relevant item of business, unless the member has a dispensation from the authority, or to take any action on the matter as a member of the Executive, other than to refer the matter to another executive member for determination.
- 4.6 The definition of a DPI is significantly different from the former Prejudicial Interest definition:
- It applies to interests of the member and their spouse or partner. This means that for registration, it is wider than the old requirements which applied only to interests of the member him/herself. But for disclosure and non-participation purposes it is significantly narrower than the old definition, as it omits reference to the member's family or friends.
  - It is broader than the old definition of a prejudicial interest, in that it is a DPI even if there is no likelihood that it might prejudice the member's perception of the public interest. The Government has clearly taken the view that this element of the old Prejudicial Interest test would not stand up to scrutiny in the criminal courts, but it

means that a decision which has only a minimal impact on a member's property or employer can trigger a criminal offence.

- It is also narrower in that it applies only to very defined categories of interest and omits reference to matters likely to affect the wellbeing or financial standing of the member, or his/her family or friends.

4.7 The seven specific categories of DPI also show significant changes from the old Model Code of Conduct. A high level overview of the definitions in the Regulations reveals gaps, for example:

- the "Employment" category applies only to employment or a business carried on for profit or gain, so excluding unpaid work for public, voluntary and charitable bodies (unless Special Responsibility Allowances constitute profit or gain).
- the "Contracts" category only applies to contracts between the authority and either the member or a body in which he has a beneficial interest; however, the definition of "beneficial interest" includes directors, but omits employment on terms where the member would get a direct benefit such as a performance bonus from the existence of the contract.
- Gifts and Hospitality have been omitted from the regulations. So, if authorities wish to maintain a register of gifts and hospitality or provide advice to members on when to accept or decline gifts or hospitality, or when such a gift or hospitality might give the impression of bias, it will need to be added to the Code.

4.8 It is therefore proposed within the Code of Conduct that the definitions of Pecuniary Interest and non-Pecuniary Interest cover these gaps in order to ensure public confidence that all relevant Interests are captured by the Code of Conduct.

### ***Effect of DPI on Participation in a Meeting***

4.9 The previous report to Council on 17 May 2012 set out the effect of a DPI on participation in a meeting and that Standards Committee supported an approach which would 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. This approach is set out in the proposed Code of Conduct.

### ***Requirement to Publicise Code of Conduct after Adoption***

4.10 Section 28(12) of the Localism Act 2011 requires that the Council "must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area." The Monitoring Officer will arrange this once Council has made a decision to adopt a Code of Conduct.

### **Procedure for Complaints - Right of Appeal**

4.11 During the debate at Council on 17 May 2012, Members requested an appeal mechanism in the event of a finding against a Member. Council is referred to the updated Complaints Procedure Arrangements attached at Appendix B and the amendments made at section 13.

- 4.12 It is proposed that the internal right of appeal would only be available where there has been a finding by the Standards Sub-Committee against a Member. It would therefore not be available to the complainant in the event that their complaint is not upheld. The justification for this is two-fold. Firstly, the new process is 'bottom heavy' in favour of the complainant as they can choose whether a formal or informal approach is taken and therefore making it 'top heavy' in favour of the Member balances this out. A member of the public could judicially review any decision or make a complaint to the LGO so they would still have a remedy. Secondly, the potential seriousness of the consequences for a Member of a finding against them are far greater than for a complainant whose complaint is not upheld.
- 4.13.1 It is proposed that the appeal would be heard by a second sub-committee, consisting of different members to that which sat of the first sub-committee. The appeal could either be against the finding of a breach of the code, or against the sanction imposed, or both. In order to ensure that the Member provides clarity as to their reasons for appeal the Arrangements set out grounds for appeal against the finding and/or against any sanction imposed. These grounds reflect those of the First Tier Tribunal which formerly considered appeals. To be clear this is not intended to be a hurdle to prevent appeal (it is not the equivalent of a permission to appeal stage in criminal/ civil law), but rather to ensure the second sub-committee has all relevant information. The experience of review sub-committees under the existing standards regime is that they have considered almost exactly the same information as the original assessment sub-committee and have therefore inevitably reached the same conclusion as both sub-committees look at the matters in a consistent way, in accordance with agreed criteria. In order to ensure an effective appeals mechanism, the Sub-Committee must have as much information before it that is needed.
- 4.13.2 There may be a member development requirements for those members of the sub committee and second sub committee in preparation for their roles and appropriate arrangements will be made to put this into place..

## **Standards Committee**

### ***Political Proportionality***

- 4.14 At its meeting on 17 May 2012 Council decided that the Standards Committee should be politically balanced in accordance with section 15 of the Local Government and Housing Act 1989 (LGHA). The Committee will therefore consist of 5 Conservative Members, 2 Labour Members and 1 Liberal Democrat Member.
- 4.15.1 Council had also decided that the Standards Sub-Committee should be politically balanced. However in order for the appeal mechanism set out above to be effective the size of the Sub-Committee must be no more than 3 members (to ensure sufficient members are available for the initial hearing and any subsequent appeal), which means the rules of political proportionality must be waived under section 17 of the LGHA.
- 4.15.2 It is also considered that a Sub-Committee which is exempt from the rules of political proportionality will provide greater confidence to the public as it will aid the perception of independence of the Sub-Committee. In order for political proportionality to be dis-applied under section 17 LGHA, Council must vote in favour without any member of the Council voting against the resolution.

### ***Terms of Reference***

- 4.16 The terms of reference of Standards Committee and the Sub-Committee approved by Council on 17 May 2012 have been updated to reflect the right of appeal and that the Sub-Committee is not subject to the rules of political proportionality. The updated terms of reference are attached at Appendix C for approval.

### ***Appointments to Committee, including Chair and vice-Chair***

- 4.17 Council is invited to confirm the appointments to the new Standards Committee and to elect a Chairman and Vice-Chairman of the Committee. In future these appointments will be made at Annual Council in the usual way. A decision on whether or not the Chairmanship of the Committee warrants a Special Responsibility Allowance will be considered by the Independent Remuneration Panel as part of its annual review of the Members' Allowances Scheme, therefore the Chairman will not receive an allowance during 2012/13.

### ***Co-opted Members***

- 4.18 Council has decided that two co-opted non-voting Parish members should form part of the Standards Committee and that one be invited to attend a Sub-Committee dealing with a complaint against a Parish Councillor. The Monitoring Officer has written to all the Parish Councils in the District to invite nominations for the co-opted members. It is recommended that the Monitoring Officer and Strategic Director of Finance, Policy and Governance be delegated to shortlist and interview applicants and report back to Council to approve appointments.
- 4.19 Due to clarification being received as to eligibility for the role of Independent Person (see below) it is no longer proposed to appoint two independent co-opted members to the Standards Committee.

### **Independent Person and Reserve Independent Person**

- 4.20 At its meeting on 17 May 2012 Council resolved to advertise for applicants for the roles of Independent Person (IP) and Reserve Independent Person (ResIP). Shortly after the Council meeting draft regulations were published which set out that the Independent Chair and Vice-Chair of the previous Standards Committee would now be eligible to be appointed as IP. The Monitoring Officer therefore consulted with the Group Leaders who indicated that they would support the appointment of the current Chairman and Vice-Chairman of the existing Standards Committee, to the roles of IP and ResIP respectively, exercising discretion not to advertise the roles as indicated in the legislation.
- 4.21 The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 were published on 6 June 2012 and set out in paragraph 7 that a person may be appointed as the IP under section 28(7) of the Localism Act, if that person is not a member or co-opted member of the Standards Committee on 1 July 2012, but has held such a post at any time during the 5 years ending on 30 June 2012. In order to be eligible the Chair and Vice-Chair must tender their resignation prior to 30 June 2012.
- 4.22 Subject to receipt of the required resignations, Council is recommended to appoint Nicholas Moss (former Independent Chair) as IP and Peter Chapman (former Independent Vice-Chair) as ResIP, without the need for advertising the roles, given

their extensive experience of standards in North Hertfordshire. The thorough approach both bring which will be an important asset whilst the new system is being implemented.

### ***Allowances for IP and ResIP***

- 4.23 Council delegated the setting of initial allowances to the Monitoring Officer in consultation with others, with the function subsequently delegated to the Standards Committee. One of the parties with whom the Monitoring Officer was to consult was the Independent Chairman of the Standards Committee, who is now being proposed for the role of IP. Given this conflict of interests, the Monitoring Officer has therefore decided to refer approval of the initial allowances to Council. It is also suggested that the Independent Remuneration Panel (IRP) should review the allowances in the future, rather than Standards Committee, given the greater experience of the IRP in such matters.
- 4.24 The Monitoring Officer has reviewed the approach of other Councils on allowances proposed for IPs. There is no consistency of approach across Councils. Some Councils are only offering expenses, others allowances of different amounts. It is therefore suggested to use the existing allowance of the Independent Chairman as the starting point for calculation. It is proposed that the allowance for the IP is 50% of the existing Standards Chairman's allowance with an annual review. The basis for this approach is that it is anticipated the demands of the role of IP should be less than those for the Independent Chairman as the initial filtering of complaints should greatly reduce the number of Sub-Committee hearings required. However, as this is a new system, it is difficult to presently quantify. The allowance would therefore be subject to annual review once there is more clarity on the demands of the role. The IP allowance for 2012/13 is proposed to be the sum of £2,205 and is recommended to Council for approval.
- 4.25 Given the inherent conflicts built into the IP role that necessitate an alternate, the Res IP will have an important procedural role to play in the processing of complaints. In the same way as for the IP, it is difficult to presently quantify the demands on this role. As a starting point, it is proposed that an allowance of 25% of the IP allowance be awarded, subject to annual review by the IRP. The recommended Res IP allowance for 2012/13 is proposed at £550 and is recommended to Council for approval.

### **Future Procedural Requirements**

- 4.26 Members will be required to sign undertakings to comply with the new Code of Conduct and will also be required to complete a new Declaration of Interests. It is recommended that preparation of these documents is delegated to the Monitoring Officer.
- 4.27 Council are also recommended to delegate to the Monitoring Officer, in consultation with the Independent Person, authority to make minor amendments to the Complaints Procedure Arrangements. As this will be a new process for dealing with standards matters it is intended to review the Arrangements as complaints are received and processed to ensure they are working as intended. It may be necessary to make minor amendments as a consequence. Any major amendments identified will be referred back to Council for approval.

## **5. LEGAL IMPLICATIONS**

- 5.1 Council's terms of reference include "adopting and amending the Authority's Code of Conduct for members and other codes and protocols comprising the ethical framework".
- 5.2 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.
- 5.3 Section 27 of the Localism Act 2011 states that there remains a duty on the Council and the Monitoring Officer to promote high standards of conduct. Section 27(2) requires that relevant authorities must, in particular, adopt a code dealing with the conduct that is expected of members and voting co-opted members of the authority. The definition of co-opted member at section 27(4) excludes non-voting co-opted members. Section 27(5)(a) states that an authority may revise its existing code of conduct. The definition of Disclosable Pecuniary Interests (DPIs) is contained in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.
- 5.4 As stated within the body of the report, section 15 of the Local Government and Housing Act 1989 requires political proportionality on Committees and Sub-Committees although that requirement can be waived under section 17 by a vote of Council in favour without any member of the Council voting against the resolution.
- 5.5 Section 28(7) of the Localism Act requires Councils to appoint at least one Independent Person for the purposes of processing complaints against Members. Paragraph 7 of the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 permits the Independent Person to be a former member or co-opted member of the Standards Committee providing they are not in post on 1 July 2012 but had held such a post at any time during the 5 years ending on 30th June 2012.

## **6 FINANCIAL AND RISK IMPLICATIONS**

- 6.1 The total combined remuneration for the Independent Person and Reserve Independent Person are less than that of the allowance previously awarded to the Independent Chair of Standards Committee and is therefore included within the Council's budget.
- 6.2 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**

- 7.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 7.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 7.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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**

Standards Committee on 26 June 2012 were consulted in line with its terms of reference to advise the Council on the adoption or revision of the Members' Code of Conduct.

## **9. RECOMMENDATIONS**

- 9.1 Council adopts the draft Code of Conduct attached at Appendix A.
- 9.2 That all Members should be required to provide an updated Declaration of Interests to comply with the Council's Code of Conduct within 28 days of the adoption of a revised Code of Conduct.
- 9.3 Council adopts the updated Complaints Procedure Arrangements attached at Appendix B, including the right of appeal for a Member.
- 9.4 That the requirement for political proportionality for the Standards Sub-Committee under Local Government and Housing Act 1989 be waived.
- 9.5 Council approves the amended Terms of Reference for the Standards Committee at Appendix C.
- 9.6 Council confirms appointments to the new Standards Committee, taking into account the nominations from the individual groups.
- 9.7 That Council appoints the Chairman and Vice-Chairman of Standards Committee for 2012/13.
- 9.8 Council notes that the Special Responsibility Allowance for the Chairman of the new Standards Committee will be considered by the Independent Remuneration Panel as part of its annual review of the Members' Allowances Scheme.
- 9.9 Council appoints Nicholas Moss as Independent Person without advertising the role.
- 9.10 Council approves the Independent Person's allowance of £2,205 for 2012/13 and that it is included in the annual review of allowances by the Independent Remuneration Panel.
- 9.11 Council appoints Peter Chapman as Reserve Independent Person without advertising the role.
- 9.12 Council approves the Reserve Independent Person's allowance of £550 for 2012/13 and that it is included in the annual review of allowances by the Independent Remuneration Panel.
- 9.13 Council authorises the Monitoring Officer to invite applications for the two Co-opted non-voting Parish Members to the Standards Committee, with the Monitoring Officer and Strategic Director of Finance, Policy and Governance being delegated to shortlist and interview applicants and report back to Council to approve appointments.



- 9.14 The Monitoring Officer be delegated authority to make the necessary changes to the Council's Constitution and Standing Order(s) in consequence of the adoption of the revised Code of Conduct.
- 9.15 The Monitoring Officer be delegated authority to produce any necessary forms and procedures for the operation of the new Code of Conduct.
- 9.16 The Monitoring Officer, in consultation with the Independent Person, be delegated authority to make minor amendments to the Complaints Procedure Arrangements.

## **10. REASONS FOR RECOMMENDATIONS**

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

## **11. ALTERNATIVE OPTIONS CONSIDERED**

Alternative Codes of Conduct were considered and discounted for the reasons set out in the report.

## **12. APPENDICES**

Appendix A: Draft Code of Conduct

Appendix B: Draft Complaints Procedure Arrangements

Appendix C: Draft Terms of Reference for Standards committee

## **13. CONTACT OFFICERS**

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## **14. BACKGROUND PAPERS**

Report to Annual Council 17 May 2012.