
REPORT TO:	STANDARDS COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	13TH JUNE 2012	CATEGORY: RECOMMENDED
REPORT FROM:	MONITORING OFFICER	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	MARK ALFLAT (595712)	DOC:
SUBJECT:	THE NEW STANDARDS REGIME	REF:
WARD(S) AFFECTED:	ALL	

1.0 Reason for Exempt

1.1 Not applicable.

2.0 Recommendation

2.1 The Committee's recommendations to the Full Council on the following issues are requested:-

- The appointment and composition of a Standards Committee.
- The adoption of a Code of Conduct.
- The appointment of Independent Person(s) and the level of any remuneration.
- The adoption of appropriate "arrangements" and a procedure for processing and considering complaints for breaches of the Code of Conduct.

3.0 Purpose of Report

3.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. The date for implementation of these changes is 1st July 2012.

3.2 This report describes the changes and outlines the actions required for the Council to implement the new regime.

4.0 Detail

The New Standards Regime

4.1 The Localism Act 2011 made some fundamental changes to the standards regime introduced by the Local Government Act 2000 on the dates indicated below. In summary, it:-

- Abolished Standards for England (formerly the Standards Board for England) – 31st March 2012.

- Withdraws the requirement for local authorities to have a Standards Committee – 30th June 2012.
- Abolishes the role of (voting) Independent Members, replacing it with a diminished and non-voting role for “at least one Independent Person” – 30th June 2012.

4.2 The Act requires Local Authorities to promote and maintain high standards of conduct by elected and co-opted members and have in place arrangements to investigate allegations of breaches of the Code of Conduct. Therefore, even though the requirement to have a Standards Committee is removed, the likelihood is that most, if not all, authorities will retain the Committee in one form or another.

4.3 While the Act, in its final form, retained the obligation for each Council to have a Members’ Code of Conduct, it gives more freedom to decide what is in it.

4.4 Finally, the Act creates a new criminal offence for a Member to fail to declare or register interests. However, the sanctions that can be imposed for breach of the Code of Conduct are much reduced from the current sanctions.

Standards Committee

4.5 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. Therefore, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so it is likely to remain convenient to have a Standards Committee. It will be a normal Committee of the Council, without the unique features which were conferred by the previous legislation. As a result, the composition of the Committee will be governed by the political proportionality rules.

4.6 The current co-opted Independent Members will cease to hold office. The Act establishes for a new category of Independent Persons who must be consulted at various stages, but provides that the existing co-opted Independent Members cannot serve as Independent Persons for 5 years (subject to possible transitional arrangements which would enable such appointments). The new Independent Persons may be invited to attend meetings of the Standards Committee.

4.7 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives will cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. This could mean 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).

4.8 Similarly, the District Council can, if it so wishes, continue to appoint separate Independent Members to serve on the Standards Committee as co-opted but non-voting Members to ensure transparency and independence to the work of the Committee.

Code of Conduct

4.9 The Localism Act repeals the current ten General Principles and Model Code of Conduct and Members will no longer have to give an undertaking to comply with the Code of Conduct. However, Councils will still be required to adopt a new Code of Conduct governing elected and co-opted Members’ conduct when acting in that

capacity. The Code must be consistent with the following seven “Nolan” principles of standards in public life:-

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

4.10 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the above seven principles. However, Regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority’s Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. 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 that it might be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to recommend to Full Council the adoption of a draft Code requiring registration and disclosure for those interests which would today amount to personal and/or prejudicial interests.

4.11 Therefore, the Council’s new Code of Conduct will have to deal with the following matters:-

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct.
- Registration and disclosure of interests other than DPIs – effectively replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose but, until the regulations are published defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

4.12 There are a number of draft Codes in circulation issued by The Association of Council Secretaries and Solicitors (ACSeS), the Local Government Association (LGA) and the Department for Communities and Local Government (CLG). Following three Meetings of Derbyshire Monitoring Officers, an amended existing Code and a Code based on the LGA version have been developed with the aim of achieving some level of consistency throughout the county. These are attached at Annexes ‘A’ and ‘B’ respectively.

4.13 Once the Code is adopted, it must be published in a manner likely to bring it to the attention of the public (section 25(10)).

Independent Person(s)

4.14 Section 28 of the Act provides that any Local Authority’s arrangements for investigating allegations for breach of its Code of Conduct must include provision for the appointment of “at least one Independent Person”. The Act gives discretion to appoint one or more “Independent Persons” but places restrictions on who they can be. 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 District Council or of any of the Parish 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 District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted Independent Members of the Standards Committee from being appointed as an Independent Person); or
- He/she is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted Member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- (a) the candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

4.15 However, transitional arrangements may be introduced that would allow existing Independent Members of the Council’s Standards Committee to be eligible to apply for the role for a limited period.

4.16 Before anyone is appointed as an “Independent Person”:-

- The Council must advertise the vacancy.
- Interested persons must submit an application.
- The persons appointed must be approved by Full Council.

4.17 Unlike Independent Members of the current Standards Committee, the new Independent Person(s) cannot vote nor can they be the Chairman of the Committee. Their views must merely be “taken into account” when the Monitoring Officer or Committee decides an allegation of breach of the Code should be investigated. The roles of the Independent Person(s) are as follows:-

- 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 local resolution of the complaint, or on any finding of 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; and
- 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.

- 4.18 This could cause some problems, as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.
- 4.19 The Act gives discretion to appoint one or more Independent Persons. To avoid the situation where the Independent Person has advised the Member under investigation and may therefore be considered to be conflicted, it is suggested that two Independent Persons should be appointed.
- 4.20 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.
- 4.21 In comparison to the current Chairman of Standards Committee, the role of an Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal Member of the Committee or Panel. He/she will need to be available to be consulted by Members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint and the alternate Independent Person would be called upon. This report suggests that the Independent Person could also be involved in the local resolution of complaints and in the grant of dispensations. If two Independent Persons were appointed, it is suggested that the current Special Responsibility Allowance for the Chairman of the Committee (£2240 per annum) could be divided equally between them.
- 4.22 A role description and person specification for the role of Independent Person are attached at Annexe 'C'.

Procedures for Considering and Investigating Complaints

- 4.23 The Act requires that the Council adopts "arrangements" for dealing with complaints of a breach of the Code of Conduct both by District Council Members and by Parish Council Members, and such complaints can only be dealt with in accordance with such "arrangements". Therefore, the "arrangements" must set out in some 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 relevant Code of Conduct.
- 4.24 The advantage is that the Act repeals the requirements for the current separate Initial Assessment, Review, Consideration 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 give 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.
- 4.25 In practice, the Standards for England guidance on the initial assessment of complaints provided a reasonably 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. 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 he should be accountable for its discharge. For this purpose, it would be appropriate that he make a six-monthly report to Standards Committee, which would enable him to 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 and costs.

- 4.26 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 Consideration Sub-Committee, which then 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 he considers it appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him/her to get an overview of current issues and pressures, and that the Monitoring Officer provides a summary report of each such investigation to Standards Committee for information.
- 4.27 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 Sub-Committee 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 Hearings 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.
- 4.28 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 on members. 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:-
- Censuring the Member.
 - Reporting its findings to Council [*or to the Parish 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 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*].
- 4.29 There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no 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.
- 4.30 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, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

4.31 Meetings have taken place between Monitoring Officers from all Derbyshire authorities with the aim of agreeing consistent arrangements and a copy of the Procedure developed is attached at Annexe 'D'. The Council has to decide the "arrangements" it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct. In this regard, the following is suggested:-

- (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.
- (c) Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be authorised to close the matter, provide a copy of the report and findings of the investigation to the complainant, the Member concerned and the Independent Person, and report 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 report the investigation findings to a Hearings Sub-Committee of the Standards Committee for a local hearing.
- (e) That Full Council delegates to the Hearings Sub-Committee such of its powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct.
- (f) That the Standards Committee revisit the Terms of Reference, Procedures and composition of its Hearings Sub-Committee to ensure it is appropriate for the new regime.

Registers of Members' Interests

4.32 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the registers for Parish Councils, which also have to be open for inspection at the Civic Offices and on the District Council's website.

4.33 It is not yet known what DPIs will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.

4.34 The provisions of the Act in respect of the Code of Conduct require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

- 4.35 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the Civic Offices and on the Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.
- 4.36 Each elected or co-opted Member must register all DPIs 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.
- 4.37 As 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.
- 4.38 There is no continuing requirement for a Member to keep the register up to date, except on re-election or re-appointment, but it is likely that Members will register new interests 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.
- 4.39 The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

Disclosure of Interests and Withdrawal from Meetings

- 4.40 The duty to disclose and withdraw arises whenever a Member attends any meeting of Council, a Committee or Sub-Committee, and is aware that he/she has a DPI in any matter being considered at the meeting. Therefore, it applies even if the Member would be absent from that part of the meeting where the matter in question is under consideration.
- 4.41 Where these conditions are met, the Member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of Members' interests, as registered interests will no longer be disclosed at the meeting.
- 4.42 Where the Member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 4.43 If a Member has a DPI in any matter, he/she must not:-
- participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

4.44 Failure to comply with the requirements becomes a criminal offence, rather than leading to sanctions.

4.45 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct, but not a criminal offence.

4.46 Failure to withdraw from the meeting room would not be a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the Member.

Sensitive Interests

4.47 The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests. Therefore, 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".

4.48 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

4.49 The provisions on dispensations are significantly changed by the Localism Act. At present, a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds, as follows:-

- That at least half of the Members of a decision-making body have prejudicial interests; and
- That so many Members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.

4.50 In future, a dispensation will be able to be granted in the following circumstances:-

- (a) That so many Members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business". In practice, this means that the decision-making body would be inquorate as a result;
- (b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- (c) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- (d) That, without a dispensation, no Member of the Committee or Sub-Committee would be able to participate on this matter; or
- (e) That the authority considers that it is otherwise appropriate to grant a dispensation.

- 4.51 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 4.52 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Localism Act gives discretion for this power to be delegated to the Standards Committee or a Sub-Committee, or to the Monitoring Officer. The grounds (a) and (d) above are fairly objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”. The remaining grounds (b), (c) and (e) are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with the Standards Committee, after consultation with the Independent Person.
- 4.53 It is suggested that the Council could delegate the power to grant dispensations as follows:-
- (a) on grounds (a) and (d) above to the Monitoring Officer with an appeal to the Standards Committee, and
 - (b) on the remaining grounds (b), (c) and (e) to the Standards Committee, after consultation with the Independent Person.

5.0 Financial Implications

- 5.1 As outlined in the report.

6.0 Corporate Implications

- 6.1 The Localism Act 2011 makes fundamental changes to the Standards of Conduct regime for elected Members and the Council must comply with the legislation.
- 6.2 Members’ Conduct and the new Standards regime links to all aspects of the Council’s decision-making process and corporate aims.

7.0 Community Implications

- 7.1 The Council’s Standards Committee currently plays a vital role in promoting and maintaining the highest standards of conduct by Councillors of South Derbyshire District Council and all the Parishes in its area.

8.0 Background Papers

- 8.1 Localism Act 2011