

STANDARDS COMMITTEE – 26 JANUARY 2012

WORKING TOWARDS ESTABLISHING THE NEW STANDARDS REGIME UNDER THE LOCALISM ACT 2011

Report of the: Monitoring Officer

Status: For Consideration and Decision

Executive Summary: The purpose of this report is to create a Task and Finish Group of Members and Officers to formulate behaviour and conduct requirements that are fit for purpose and appropriate to the requirements of the Localism Act 2011 in line with the resolution passed by this Committee on 2 August 2011.

This report supports the Key Aim of effective management of Council resources

Head of Service Mrs. Christine Nuttall – Head of Legal and Democratic Services

Recommendation: That

- (a) the contents of this report be noted; and
 - (b) the composition and Chairman of a Task and Finish Group be appointed by this Committee in order that the Task and Finish Group examine the existing Constitution and formulate behaviour and conduct requirements in line with the Localism Act 2011 for consideration by the Modern Local Government Group and Full Council.
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Reason for recommendation: The Task and Finish Group is necessary in order to formulate proposals for Council to consider and put in place new local standards arrangements to comply with the requirements of the Localism Act 2011.

Introduction

- 1 The Localism Act 2011 received Royal Assent on 15 November 2011 and the scope of the work, and the key issues it raises, have therefore become clearer. This report sets the scene by providing an outline of the current ethical framework and suggests a scoping proposal for the Task and Finish Group's work in terms of key issues it will need to address in seeking to identify revised standards and procedures to replace the existing regime which are largely being swept away by the Localism Act 2011.
- 2 It is the Government's intention to bring the new provisions into force in April 2012 so that a new system can be put in place at the Annual Meetings in May 2012. However, it should be mentioned that the DCLG have recently advised that they envisage that the current regime will now be abolished on 1 July 2012 as no draft Regulations have yet been published. Despite the envisaged

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delay it is considered prudent that this Committee still works toward sign off by full Council on 15 May 2012. As a result It is anticipated that the Task and Finish Group will require to meet on a number of occasions over the coming months in order to be in a position for the Monitoring Officer to present a final report to this Committee for sign off before presenting it to the Modern Local Government Group for consideration and recommendation to the Annual Meeting of Council on 15 May 2012. It is the intention of the Monitoring Officer to keep this Committee fully informed on the progress of the Task and Finish Group as work progresses in order that sign off from this Committee can take place relatively quickly although an extra meeting of the Standards Committee will be needed for such sign off to take place.

- 3 On 2 August 2011 the Standards Committee passed a resolution which was as follows:

“the Chairman discuss with the Leader of Sevenoaks District Council and the Portfolio Holder for Safe Community their interest in the Standards Committee proposing new simplified structures following the abolition of the existing regime; and pending such discussions, a Task and Finish Group be formed to investigate recommendations to Sevenoaks District Council following the abolition of the existing regime.”

Discussions took place on 18 October 2011 and, as can be seen from the above timetable there is now a pressing need for this Committee to select members to sit on the Task and Finish Group.

- 4 It is anticipated that the Task and Finish Group will require references to a number of existing key documents such as Part 3 of the Constitution entitled “Standards Committee” and the following Appendix to the Constitution:

- Appendix K – Protocol on Gifts and Hospitality
- Appendix O – Members’ Register of Interest Form
- Appendix Q – Members’ Code of Conduct
- Appendix S – Procedure for Local Assessment of Complaints relating to Allegations of Member Misconduct
- Appendix T – Sub-Committees of the Standards Committee
- Appendix U – Guidance on Applying an Appropriate Sanction
- Appendix X – Procedure for referrals to the Monitoring Officer for Investigation and Determination

A pack of these documents will be provided to the Task and Finish Group.

The Current Arrangements

- 5 The current ethical framework is viewed as complex, detailed and bureaucratic. The key elements of the current system are as follows:

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A model Code of Conduct which places an obligation on Members to conduct themselves according to certain standards which cover:

- To treat others with respect
- Not to bully any person
- Not to disclose confidential information
- Not to bring their office or authority into disrepute
- Not to use their position as a member to improperly confer an advantage or disadvantage
- Use resources of the authority reasonably and not for political purposes
- Rules on registration of certain personal interests and disclosure of personal and prejudicial interests
- Leave the meeting room and not take part in any vote on a matter in which they have a prejudicial interest

Statutory Standards Committees

- 6 The Committee is supported and advised by the Monitoring Officer and oversees the ethical framework. The Standards Committee must be chaired by an “Independent Member”.

A Statutory Regime for handling formal complaints in relation to Members breaching the Code of Conduct

- 7 Each complaint is filtered by an Assessment Sub-Committee of the Standards Committee which decides whether the complaint should be formally investigated or other action taken. Panels are guided by advice from the Monitoring Officer and Assessment Criteria in reaching their decisions.
- 8 A Review Sub-Committee considers appeals by complainants if an Assessment Sub-Committee decides to take no further action on a complaint.
- 9 A Determination Hearing Sub-Committee holds hearings into complaints following any formal investigations.
- 10 There is a range of sanctions available to the Determination Hearing Sub-Committee and all the Sub-Committees have the power to refer matters to Standards for England which is due to be abolished on 31 March 2012 although the regulatory role in handling cases and issuing guidance is anticipated to stop from 31 January 2012.
- 11 Very few complaints are referred for formal investigation and hearings. When cases are referred to the Monitoring Officer for “other action” this usually involves training and or conciliation. The Monitoring Officer’s advisory role

extends to regular day to day queries not only from District Councillors but also from Parish/Town Council Members including Clerks.

The Localism Act 2011 – the new regime

- 12 The Government's intention to abolish the Standards Board regime has now been enacted in Chapter 7 and Schedule 4 to the Localism Act 2011. The existing system will continue until this part of the Localism Act comes into force. There will be transitional provisions in Regulations but it is likely that all cases already in the system when the law changes will be taken to their conclusion, although the transitional provisions will remove the power to disqualify and suspend councillors in the existing system.
- 13 The key provisions of Chapter 7 of the Localism Act provide that:
- The Standards for England, formally the Standards Board will be abolished
 - The national model Code of Conduct and all the existing procedures and powers to enforce that Code will be abolished
 - The duty to appoint statutory Standards Committees will be abolished although there will still be a discretion to appoint a Standards Committee to deal with standard matters under the Local Government Act 1972
- 13 In place of the existing regime the main elements of the new framework are as follows:
- A new statutory duty to promote and maintain high standards of conduct
 - In discharging this duty, full Council must adopt a new revised Code of Conduct. The Code will not cover Members acting in their private capacity. The Code must be consistent with seven statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In addition the Code must include appropriate provisions on registration and declaration of pecuniary and non-pecuniary interests.
 - There are specific statutory provisions as to disclosable pecuniary interests and the registration of such interests as well as the registration of interests other than pecuniary interests which will be held by the Monitoring Officer in relation to the District Council and all the Parish/Town Councils within the District. What is a disclosable pecuniary interest and what are interests other than pecuniary interests has been given no definition yet but Regulations on this are awaited. Interests will not only include interests of Members themselves but also their spouse or partner.
 - Disclosable pecuniary interests which are not registered or in the process of being registered must be disclosed at meetings where relevant. A Member with a disclosable pecuniary interest in a matter cannot participate in discussion of the matter or vote upon it unless a

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dispensation has been granted. The Act creates a number of criminal offences in relation to non compliance with the statutory rules on interests. Prosecutions will take place through the Police and DPP.

- The power to create dispensations to participate and vote despite the existence of a pecuniary interest in a matter have been widened.
- In relation to handling complaints the Act allows a considerable amount of discretion as Councils are required to have in place “arrangements under which allegations can be investigated and decisions on allegations can be made”. Such arrangements must include provision for the appointment of at least one “Independent Person” whose views must be taken into account before the authority takes a decision on any allegation it has decided to investigate. The Independent Person may be consulted by a Member against whom an allegation has been made. In addition the Independent Person may be consulted by a Parish Councillor against whom an allegation has been made. The Independent Person cannot be appointed as an Independent Person if they have within the past 5 years been a co-opted voting member of a Committee of the authority. This could mean that all existing independent co-opted Members of Standards Committees are ineligible to be appointed as Independent Persons at the authority they have been serving on. This has become an issue with local government lawyers who are debating whether this result was intended or even achieved by the wording of the Act. The Association of Secretaries and Solicitors are taking legal advice on the point.
- If a breach of the Code of Conduct is found the Council may have regard to that breach in deciding what action to take. However, there are no statutory sanctions available. Censure by naming and shaming appears to be the only available action, other than administrative measures such as withdrawal of facilities, political group discipline, removal of Members from positions of responsibility such as from Committees.
- In relation to Parish/Town Councils a late amendment to the Bill has created the situation where District Councils still have the responsibility for the ethical conduct of Parish/Town Members although no powers have been given to District Councils to enable them to undertake the task. Parish/Town Councils are free to adopt their own Code although they can just agree to adopt the same Code as their District Council and the District Council’s arrangements for handling complaints will also apply to complaints received by the District Council in relation to Parish/Town Members.

Key Issues for the Task and Finish Group

- 14 The key issues that the Task and Finish Group needs to consider in order to put in place new local standards arrangements can be summaries as follows:
- What kind of Code does the Council want? Professional bodies and local government organisations are actively working on possible Code models to recommend to local authorities. This work will assist and there will be

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advantages in formulating a Code which is widely adopted in order to create consistency.

- To what extent should the Code of Conduct be supplemented by separate voluntary non-statutory protocols such as our existing Protocol on “Gifts and Hospitality”.
- What body should best discharge the new functions? The Act states that it cannot be a Cabinet function and it would be impractical for full Council to carry out the functions. There is the general duty of promoting high standards of conduct which implies information, publicity and training which are matters currently within the remit of the Standards Committee. There will also be the procedural and legal arrangements for dealing with and filtering complaints, making decisions to investigate and making decisions on what action to take in the event of Code breaches. How far should the existing arrangements of Assessment Sub-Committees be retained bearing in mind that the same basic set of decisions and processes as under the existing system will have to be covered under the new system. What elements of any process should be delegated to officers in consultation with a Member and the Independent Person? How far could or should the processes be undertaken in private as some are at present.
- What range of actions are realistically available when Members are found to have breached the new Code of Conduct? In this respect Members are referred to a report presented to the Standards Committee dated 2 December 2010 entitled “Self-Regulation Following Abolition of the Standards Regime” that sets out what powers may be available to local authorities once the present Standards Regime is abolished as confirmed in the Court of Appeal in R v Broadland District Council ex p. Lashley (2001). The Association of Council Solicitors and Secretaries (ACSeS) is obtaining a Counsel’s opinion on the sanctions available to authorities under the new arrangements.
- What role, if any, would non-voting co-opted Members have in relation to any proposed procedure?
- What arrangements should be put in place for appointment of and role of the statutory Independent Person? The Independent Person has to be appointed by advertisement and application. They can be paid a fee and/or expenses and the Act provides that a person does not cease to be independent merely because such payments are made. As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person would not come within the scheme of Members’ Allowances, and can therefore be determined without reference to the Independent Remuneration Panel.
- What arrangements should be made for making decisions on applications for dispensations to participate/vote despite the existence of prejudicial interests? Could some of the decisions be delegated to officers?

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- What local arrangements should be made with the police in the event that complaints are received which allege or disclose criminal offences under the Act's interest provisions?
- What local IT arrangements will need to be put in place as all Registers for Disclosable Pecuniary Interests and Non Pecuniary Interests will need to be displayed on the District Council's website for our own Members as well as the Members of the 30 Parish/Town Councils within our District?
- Should the Monitoring Officer and council staff continue to provide an "on demand" advisory role for Parish/Town Clerks and Parish/Town Members?
- What training arrangements for Members, Officers and Parish/Town Clerks and Members will be required in order to facilitate a smooth transition to the new systems?

Key Implications

Financial

- 15 The Localism Act should allow a far less bureaucratic process to be put in place which should enable savings to be made. However, many changes were made to the Government's initial Bill provisions in relation to Standards and the final form of the Act includes a number of late concessions which may prove problematic in practice. A late amendment to the Bill means that District Councils must continue to have a statutory duty towards the conduct of Parish/Town Members. As this is a statutory responsibility District Councils will be unable to make a charge for this under the new Local Authority's General Power of Competence.

Community Impact and Outcomes

- 16 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members and the community will expect the Council to operate to the highest ethical standards. However, in place of the existing regime, the Localism Act allows a good deal of local choice for Councils within an overall framework.

Legal, Human Rights etc.

- 17 The Localism Act implements a statutory regime and duty. Some of the provisions appear problematic and a legal advice is already being sought by the Association of Secretaries and Solicitor in relation to the provisions surrounding who can be the Independent Person and whether existing Independent Members of Standards Committees are ruled out. In addition, the functions of the Independent Person would appear to create conflicts of interest in that an Independent Person who has been consulted by the Member against whom the complaint has been made, may as a result be regarded as prejudiced on the matter and thereby conflicted out when involved in the determination of the complaint.

Conclusions

- 18 The report sets out the need for a Task and Finish Group to help implement the extensive changes required by Chapter 7 and Schedule 4 of the Localism Act 2011.
- 19 Each relevant authority will be under a duty to promote and maintain high standards of conduct by elected and co-opted Members of the authority.
- 20 Each authority will be required to adopt a Code of Conduct and this authority will be under a duty to deal with complaints relating to breaches of the Code. In addition this duty will extend to the 30 Parish/Town Councils within the District.
- 21 Robust procedures are needed to be worked through as quickly as possible in order for proposals to be put forward for final authorisation by full Council.

Risk Assessment Statement

- 22 The need to establish a Task and Finish Group as soon as possible is essential in order to meet the ambitious anticipated time line for when implementation of the Chapter 7 of the Localism Act 2011 is to take place.
- 23 Failure to have robust systems in place which are fit for purpose could result in reputational damage to this Council and to individuals together with a failure by this Council to abide by statutory requirements. The risks increase as not only are District Councils responsible for putting systems in place for themselves but for Parish/Town Councils within their Districts.

Background Papers:

Localism Act 2011

What have the Lords Bequeathed us on Standards? Bevan Brittan

A plain English guide to the Localism Act

Managing Major Change Corporate Governance
ACSeS Conference 2011

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