

Item 6a – The Localism Act 2011 - The New Standards Regime

Modern Local Government Group's Recommendation to Council

At its meeting on 11 July 2012, Modern Local Government Group considered the matter as follows:

The Localism Act 2011 - The New Standards Regime

The Modern Local Government Group considered a report outlining proposals for a new Code of Conduct and new arrangements for dealing with Member complaints following implementation of the relevant provisions of the Localism Act 2011, the Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitory Provisions) Order 2012 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The existing Standards regime ceased to operate on 30th June 2012 with transitional arrangements being limited and not allowing for the old arrangements to continue. From 1st July, the Council was required to adopt a new Code of Conduct and put in place arrangements for investigating allegations of breaches and for making decisions in respect of those allegations.

A Task Group was set up from Members of the existing Standards Committee and met on six occasions to give guidance to Officers on implementation of the new regime. The last meeting of the Group took place on 28th June 2012 when this report, including the appendices, was considered in draft. The comments of the Group on the draft documentation were attached at Appendix 1 to the report.

The Chairman thanked Officers and the Members of the Task and Finish Group for the time and work that had been devoted to developing the new code of conduct processes and procedures.

The Monitoring Officer provided an overview of the report and highlighted that what was being proposed was a completely new Standards regime. The two key differences required by statute were a change in the definition of interests and that Local Authorities now had to choose their own Code of Conduct. The favoured option of the Task and Finish Group was the Code that had been developed by the Department for Communities and Local Government (DCLG) which was also known as the "Bob Neill Code", this Code was set out on Page 17 of the agenda. The Monitoring Officer highlighted that the DCLG Code did not include specific provisions for bullying, disrespect and acting in a way to bring the Authority into disrepute, although it had been suggested that the Code could cover these issues by implication. The Monitoring Officer did not believe this to be the case and stressed the dangers of relying on implied terms which could ultimately result in a costly legal challenge. In light of this, the Monitoring Officer sought a clear steer from the Modern Local Government Group in order to provide clarity surrounding these issues.

The Portfolio Holder for Safer Communities (the Portfolio Holder), who had also been Chairman of the Task Group, reported that under the Localism Act 2011, Council's had a duty to promote and maintain a Code of Conduct which needed to comply with the Nolan Principles. The arrangements and procedures for handling complaints made under the Code of Conduct would have to apply to Town and Parish Council as well as the District Council. The Town and Parish Councils would have to develop their own Code of Conduct, although complaints made about Town and Parish Councillors would have to be managed by the District Council. The Portfolio Holder stressed that under the new standards regime there were now no sanctions if Councillors or Co-opted Members were found to have breached the Code although the legislation had now introduced criminal sanctions for not disclosing pecuniary interests.

MLG was reminded that the Portfolio Holder had reviewed and investigated a number of different codes and had dedicated substantial time to developing the new Code. Ultimately the DCLG Code was favoured however, what was before MLG was an integrated package. As the new system was of a complicated nature the Portfolio Holder emphasised that this was not a "pick and mix" option for the different elements, it needed to be viewed as a complete package of documentation.

The Portfolio Holder reported that she had consulted a number of lawyers who had confirmed that a Code of Conduct based on the seven Nolan Principles would incorporate bullying and respect. Bob Neill MP, Parliamentary Under Secretary of State, had spoken with one of the Members of the Task and Finish Group and had confirmed that he was satisfied that the DCLG Code met the Nolan Principles. In particular, the Portfolio Holder was confident that paragraph 8 of the draft code was sufficiently broad to include issues relating to bullying and respect.

MLG considered the various issues that had been raised. Following discussions, the consensus of the Group was that issues of bullying, lack of respect and bringing your office into disrepute was covered under the DCLG Code, which was based on the Nolan Principles, and the assessment criteria that had been developed by the Task Group was linked to the DCLG Code. The Assessment Test had clear definitions (at page 59 of the report) of Lack of Respect and Bullying and Intimidation. Members of MLG felt that the Code that had been recommended by the Task Group after extensive work should be recommended to Council for adoption and kept under review for a year by a Sub-Committee established by the new Standards Committee.

The Portfolio Holder for Safer Communities outlined the assessment process, highlighting that after a complaint had passed the initial assessment phase all documents would be passed to the Member accused and the Monitoring Officer would consult the Independent Person. MLG welcomed the changes which meant that Members accused of breaching the Code of Conduct would now be informed of the exact nature of the allegations against them. In response to a question surrounding whether Members would have any right of appeal against decisions taken, the Monitoring Officer reported that there was no explicit right of appeal, but the Ombudsman could be approached in cases where individuals felt that there had been procedural impropriety.

A Member noted that whilst there were no formal sanctions for breaches of the Code of Conduct, it would be the responsibility of the political leadership and political groups to impose informal sanctions on Members who had been found to be in breach of the Code.

Turning to the issue of the Independent Person, MLG noted that this was a new role that had been introduced by the legislation. The primary role of the Independent Person would be to give evidence in advance of the decision of the Hearings Panel. The Monitoring Officer would also be able to seek the views of the Independent Person throughout any investigations that may arise. The Chairman noted that the job description on page 76 of the report suggested that one of the roles of the Independent Person was, if requested, to advise a Member who had been accused of breaching the Code of Conduct. The Chairman felt that this could compromise the impartiality of the Independent Person in any investigation that may result and that it should be made clear that it was not the job of the Independent Person to be an advocate for any accused Member. Following discussion it was agreed that the wording of the Principal Accountabilities on page 76 on the report should be amended to read:

1. To give views to the Council before it takes its decision on any allegation that it has investigated that a Member has breached the Code of Conduct of the Council, or of the relevant Town/Parish Council.
2. To give views to the Council on any allegation that a Member has breached the Code of Conduct, in other circumstances at its request.
3. To give views to any Member of the Council, or of any Town/Parish Council within the Council's area who is the subject of an allegation that he or she has breached the Code of Conduct, at the request of that Member.

In response to a question from a visiting Member, the Chairman confirmed that the Independent Person would be appointed by the three political leaders and provided assurances that they would seek to appoint the "most independent of independent person."

MLG noted that the new Standards Committee and any Sub-Committee formed by it would be responsible for monitoring the new standards regime and Code of Conduct. Members requested that any notes of meetings arising from these Committee be presented to MLG for review.

Resolved: that Council be recommended to

- (a) Adopt the Department for Communities and Local Government Code, as recommended by the Task Group, as the new Code of Conduct for the District Council as attached at Appendix 2a.
- (b) Establish a Standards Committee with the Terms of Reference and Delegations to the Standards Committee as set out at Appendix 3.

- (c) Appoint 7 Members in accordance with the political balance rules to serve on the Standards Committee.
- (d) Adopt the revised procedures for dealing with misconduct complaints including arrangements for the investigation of complaints alleging a breach of the Member's Code of Conduct as set out in Appendix 4.
- (e) authorise the MO to advertise for no less than 1 Independent Person and that a panel comprising the leaders of the political groups be set up to set the allowances and expenses for the Independent Person and to short-list and interview candidates, and to make a recommendation to Council for appointment as set out in Appendix 5, subject to the amendment outlined above.
- (f) Adopt the new Register of Interest Form for District Council Members and agree the definition for interests other than pecuniary interests called non pecuniary interests (NPI's) as set out in the Form and as attached to this report at Appendix 6.
- (g) Agree to amend its standing orders to provide that a Member or Co-opted Member of the Authority must withdraw from the meeting room, including the public gallery, during the whole consideration of any item of business in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation. The power to amend the Council's standing orders in this way is given by virtue of s.31(10) of the Localism Act . This amendment to be incorporated into the Council's chosen new Code of Conduct.
- (h) Agree to delegate powers to grant dispensations to the MO in relation to section 33(2)(a) and(d) of the Localism Act and delegate powers to grant dispensations to the Standards Committee in relation to section 33(2) (b), (c) and (e) of the Localism Act as set out in Appendix 7.
- (i) Agree that the MO makes the necessary changes to the Constitution by deleting those parts of the Constitution as set out as follows:
 - Part 3 – Standards Committee
 - Appendix O – Member's Register of Interests
 - Appendix Q – Member's Code of Conduct
 - Appendix S – Procedure for Local Assessment of Complaints about Allegations of Member Misconduct
 - Appendix T – Sub-Committees of the Standards Committee
 - Appendix U – Guidance on Applying the Appropriate Sanction when a Member has breached the Code of Conduct
 - Appendix V – Process and Procedure for Interviewing and Appointing (Independent and Town/Parish Council Representative) Applicants for the Standards Committee
 - Appendix X – Procedure for Referrals to the MO for Investigation and Determination

and inserting within the Constitution the new Appendices as approved by this report and any necessary consequential changes including any reference in the Constitution to personal and prejudicial interests being changed to Disclosable Pecuniary Interests (DPI's) and interests other than Pecuniary Interests called Non Pecuniary Interests (NPI's).

- (j) Agree that the Standards Committee and or Modern Local Government Group keeps the Code and Arrangements under review and reports further to the Council as is considered necessary. The Standards Committee will consider setting up a sub-committee for this purpose.