

## STANDARDS COMMITTEE – 2 AUGUST 2011

### LOCALISM BILL AND FUTURE CODE OF CONDUCT

Report of the: Monitoring Officer

Status: For Consideration and Decision

---

**Executive Summary:** To discuss the implications of the proposals in the Localism Bill to abolish the standards regime and to examine the options that may be available for the future.

---

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

**Portfolio Holder** Cllr. Elaine Bracken

**Head of Service** Head of Legal and Democratic Services & Monitoring Officer –  
Christine Nuttall

---

**Recommendation:** It be RESOLVED that: Members consider the report and determine a way forward in relation to the options for the future.

---

#### Introduction

- 1 The Localism Bill published on 13<sup>th</sup> December 2010 contains proposals to abolish the Standards for England regime. Whilst subject to Parliamentary approval the changes will be far reaching and are likely to take effect from early 2012.
- 2 Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct although councils will instead be able to call upon a range of remedies, including existing criminal and civil law provisions and those contained in the Localism Bill. This Committee was provided with a report entitled “Self-Regulation Following the Abolition of the Standards Regime” at the last meeting on the 11<sup>th</sup> January 2011.
- 3 This report seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities in the future.

#### The Main Provisions

- 4 The proposals outlined in the Bill are as follows:
  - 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.

- 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 will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members.
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.
- Local Authorities will be under a duty to promote high standards of conduct .

### **Changes to the Common Law Rule of Bias and Predetermination**

- 5 Predetermination is an area of the common law (judge made law) that has implications for Members individually and Councils. It is wrong to associate predetermination with the Standards regime or as a direct result of the introduction of the standards regime under the Local Government Act 2000.
- 6 The long established legal position is that a Member may not be party to decisions in relation to which the Member either is actually biased in the sense that the Member has a closed mind and has pre-determined the outcome of

the matter to be decided irrespective of the merits of any representations or arguments which may be put to the Member or gives an appearance of being biased, as judged by a reasonable observer.

- 7 A finding of bias and or predetermination can make a decision unlawful with costs and reputational implications for Councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current Code of Conduct – “You must not bring your office or authority into disrepute while acting in your official capacity”.
- 8 The Localism Bill aims to clarify the rules on predetermination and bias. The Bill provides that an indication by a Councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a Councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that this will give Councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision making, unless the Councillor is so committed that they are not even prepared to listen to the evidence.
- 9 The government previously announced that a power of electoral recall of Councillors is also being proposed to allow for the removal of Councillors mid term for cases of ‘serious misconduct’, although this does not appear to be included within the Bill.

### **Decisions to be made by Sevenoaks District Council**

- 10 A number of key questions will need to be considered by this authority in order to make a number of decisions, in due course, in respect of the future approach this Council wants to adopt in relation to Members’ conduct. Key questions that have already been highlighted within the local government community in Kent are as follows:
  - How should Sevenoaks District Council respond to the proposed new duty to promote high standards of conduct amongst Members?
  - Should Sevenoaks District Council have a voluntary code of conduct and a voluntary Standards Committee with responsibility for monitoring compliance with a voluntary Code?
  - If Sevenoaks District Council decides to have a voluntary Code and a voluntary Standards Committee, what role would Independent Members have? 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 whereby they made recommendations only to Full Council.

- How would Sevenoaks District Council deal with complaints that a Member had breached a voluntary Code? The Association of Council Secretaries and Solicitors will be producing a model Code of Conduct for the future, when the Localism Bill takes effect. This will eliminate the need for local authorities to spend time doing the same thing. Kent County Council may also produce a voluntary code.
- What role could the Monitoring Officer and Deputy Monitoring Officer have in administering a voluntary Code and in dealing with training for Members and low-level complaints?
- What role could group and party discipline have in ensuring good conduct amongst elected Members?
- Could we still provide a service to the 30 Parish and Town Councils in our district as a chargeable service particularly in relation to training and complaint handling?

## **Key Implications**

### Financial

- 11 It is anticipated that changes can be accommodated within existing budgets and if a service is to be provided to Town and Parish Councils in relation to Member misconduct, this could be charged for under anticipated the new Power of General Competence.

### Community Impact and Outcomes

- 12 The public will expect some sort of systems to be in place especially as there will be a statutory duty placed upon local authorities to promote high standards of conduct.

### Legal, Human Rights etc.

- 13 There are no legal or human rights implications directly associated with this report.

### Equality Impacts

- 14 The changes that are anticipated by the Localism Bill will be statutory in nature and as such should comply with the Council's Comprehensive Equalities Scheme. Equality Impact Assessments will take place where necessary.

### Sustainability Checklist

- 15 The Sevenoaks District Council will continue to promote and uphold its statutory duties and responsibilities.

## **Conclusions**

- 16 The proposals in the Localism Bill for changes to the conduct regime for local authority Members will make sweeping changes to the current arrangements. A number of decisions will need to be made by Sevenoaks District Council in due course to implement the changes and the Committee is asked to consider and comment upon the information in this report as an early contribution to the debate.

## **Risk Assessment Statement**

- 17 Local Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards will be part voluntary and part mandatory, with criminal sanctions where certain interests are concerned. There is a need for a proper framework of local accountability in which the public can have confidence. Without this the reputation of Members and the authority as a whole could be seriously eroded.

## **Sources of Information:**

ACSeS submission to the Bills Committee on the Localism Bill March 2011

Standards for England – Understanding predetermination and bias

ACSeS – Maintaining High Ethical Standards in Local Government

Bevan Brittan – A Local Authority's Power of Self-Regulation by Peter Keith-Lucas

Bevan Brittan – What Follows Standards? A Post-Code Lottery? By Peter Keith-Lucas

## **Contact Officer(s):**

Christine Nuttall – ext. 7245

**Christine Nuttall**  
**Monitoring Officer**

