

**MINUTES OF A MEETING OF THE  
STANDARDS COMMITTEE  
HELD ON FROM 14 SEPTEMBER 2010 7.30 PM TO 8.35 PM**

*Present:-*

**Wokingham Borough Members:-** *Pauline Helliar-Symons and Malcolm Storry*

**Independent Members:-** *David Comben (Chairman), Anita H Grosz (Vice Chairman), Eric Davies and Geoff Wilde*

**Parish/Town Council representative:-** *Mr J Heggadon.*

*Also present:- Kevin Jacob, Principal Democratic Services Officer  
Colin Lawley, Legal Services Manager and Deputy Monitoring Officer*

**PART I**

**14. MINUTES**

The Minutes of the meeting of the Committee held on 8 June 2010 were confirmed as a correct record and signed by the Chairman subject to the correction of three minor typographical corrections.

**15. APOLOGIES**

Apologies for absence were submitted from Chris Bowring, Ray Duncan, John Giles and Roy Mantel.

**16. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**17. PUBLIC QUESTION TIME**

There were no public questions.

**18. MEMBER QUESTION TIME**

There were no Member questions.

**19. PARISH/TOWN COUNCIL QUESTION TIME**

There were no Parish/Town Councillor questions.

**20. PROTOCOL FOR LOCAL AUTHORITY PARTNERSHIP WORKING**

The Committee considered a report and attached appendices, (Agenda pages 5 to 13) which set out extracts of the Council's adopted Partnership Protocol and a template Partnership Protocol as developed by Standards for England.

In presenting the item, Kevin Jacob commented that it was felt that the aspects of the Council's Partnership Protocol included within the Agenda papers adequately covered aspects of personal behaviour and conduct. However, it was felt that the protocol template produced by Standards for England was a useful contribution and that it could be taken into consideration in the development of future partnership arrangements.

In discussion, the Standards for England template was generally supported although some members of the Committee felt that there was a risk that members of the public

contributing to partnership arrangements on a voluntary basis might find the protocol overly bureaucratic and constraining. The Chairman suggested that if it was felt necessary, the draft could be given further consideration by a sub group of the Committee.

Eric Davies referred to page 11 of the Agenda and the suggestion made by Standards for England in their guidance on the protocol template that Standards Committee's could potentially mediate between partners in the event of a dispute. Kevin Jacob commented that it was for the Committee to come to a view on the role it saw for itself.

After further discussion it was felt that the draft protocol was welcome, but that the intended outcomes section and extract on ethical actions were of particular value.

**RESOLVED** That the Committee recommends that the Standards for England draft Protocol for Local Authority Partnership Working, in particular the first and last paragraph, be taken into consideration by the Council in the development of future partnership working arrangements.

## **21. FUTURE OF THE LOCAL STANDARDS COMMITTEE**

The Chairman commented that he had asked for the item to be included within the meetings Agenda to allow for a discussion amongst the Committee as to the future of the Committee in light of the Government's intention to abolish the 'Standards Regime'.

Kevin Jacob and Colin Lawley commented that following the publication of the Agenda, Standards for England had produced their latest Bulletin which set out the latest position in respect of the Government's plans and changes in Standards for England business plan.

The Committee was informed that primary legislation would be required to abolish Standards for England and it was not expected that final closure would take place until between December 2011 and March 2012. It was anticipated that the necessary provisions would be contained within the Decentralisation and Localism Bill which was due to be presented to Parliament in autumn 2010. In the mean time, the existing arrangements remained in force and Monitoring Officers and Standards Committee were expected to continue to undertake their statutory responsibilities. No further details as to the future of the Local Code of Conduct or what might replace it were known.

The Chairman commented that he had contacted the Department for Communities and Local Government and had been informed that an announcement on the future of the Members Code of Conduct was expected within weeks.

Eric Davies commented that it was important for the Committee as a whole, but particularly the Independent members of the Committee to discuss and come to a view as to the future, prior to any formal decision being taken by Wokingham Borough Council. His personal view was that the Code of Conduct regime was not well regarded by elected councillors.

Pauline Helliard-Symons commented that she felt that the level of internal political discussion on the Government's proposals would depend on what form they took. If the Government was prescriptive in its approach it was likely there would be less discussion than if a range of possible options were presented. She commented that her perception was that councillors across many local authorities regarded Standards for England with some antipathy on the grounds that the Code of Conduct had on many occasions been misused.

The Chairman suggested that when more information was available as to the future of the Standards Regime it would be convenient to reuse one of the dates provisionally set aside for the consideration of complaint for a further discussion. This would be primarily aimed at Independent members but all members of the Committee would be welcomed. It was noted that the next date set aside for this purpose was 20 October 2010.

John Heggadon reminded the Committee that the Chairman was due to address the next meeting of the Wokingham and District Association of Local Councils, (WDALC) in October and that it would necessary to take a view on whether to proceed with that engagement in light of any further information on the Code.

It was agreed that subject to further information on the future of the Code of Conduct becoming available, the 20 October 2010 should be set aside for an informal discussion.

*These are the Minutes of a meeting of the Standards Committee*

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<b>TITLE</b>	<b>Changes to the Standards Regime in England</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 1 March 2011
<b>WARD</b>	None Specific
<b>GENERAL MANAGER</b>	Susanne Nelson-Wehrmeyer, Head of Governance and Democratic Services.

**OUTCOME**

To update the Committee on the proposed changes to the Standards regime as part of the Localism Bill and for the Committee to discuss the way forward.

**RECOMMENDATION**

- 1) For the Committee to note the briefing;
- 2) For the Committee to discuss the proposals and express an initial view of the way forward

**SUMMARY OF REPORT**

The Localism Bill as published in December 2010 includes proposals for major changes to the current arrangements for governing Councillor ethics and standards of conduct. The Bill is currently at Committee stage in the House of Commons.

The detail of this is set out within the attached briefing note reproduced with the permission of Evershed Solicitors, (Appendix A) and a joint paper produced by the Local Government Group and the Association of Council Secretaries and Solicitors, (Appendix B).

## Background

The Coalition Agreement included a commitment to 'abolish the Standards Board regime' and in December 2010 the Coalition Government set out this aspect of its legislative agenda within the Localism Bill.

## Analysis of Issues

The key principle within the proposed changes is a shift from a nationally proscribed Code of Conduct framework to one in which local authorities, (including Parish councils, Fire Authorities etc) are generally allowed to establish frameworks to regulate the conduct of their Members as they individually see fit, but within a legislative duty to ensure that members and co-opted members maintain a high standard of conduct. This includes decisions such as whether or not to adopt a local code of conduct, arrangements for complaints and whether or not to maintain a local Standards Committee. The Bill maintains the requirement on authorities to maintain a Members' Registers of Interests, for Members to declare such interests and introduces potential criminal culpability on Members if they breach regulations regarding interests.

If the proposals with the Bill become law, it is anticipated that the present Code of Conduct framework and Standards for England will be abolished in early 2012. The purpose of this paper is to highlight the proposed changes to the Committee and to seek the Committee's initial view on the way forward prior to the formulation of formal proposals concerning the conduct of Members and Co-opted Members of Wokingham Borough Council.

<b>Reasons for considering the report in Part 2</b>
None

<b>List of Background Papers</b>
The Localism Bill

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<b>Date</b> Monday, 14 February 2011	<b>Version No.</b> 1.00

## **EVERSHEDS BRIEFING**

### **Changes to the standards regime in England**

1. The regime which regulates the standard of conduct of local authority members in England will be drastically changed through the provisions of the Localism Bill. The arrangements which the Bill proposes to put in place will generally allow local authorities to make their own decisions as to how to regulate the conduct of their members. However, new criminal offences will be introduced, relating to failure of local authority members to register or disclose interests and their participation in local authority business contrary to prohibitions or restrictions.

#### **Standards for England**

2. The Bill allows the Secretary of State to make provision by order for the abolition of Standards for England, the non-departmental public body responsible for promoting and monitoring standards of conduct in local government. Consequently, statutory provisions which required local authorities to submit reports to Standards for England and enabled them to refer some allegations of breach of their codes of conduct to Standards for England are to be repealed.

#### **Codes of Conduct**

3. The Bill includes a duty for relevant authorities (as defined in clause 15(4) of the Localism Bill) to ensure that members and co-opted members maintain a high standard of conduct. However, in contrast to current arrangements under the Local Government Act 2000 which require local authorities to have adopted a code of conduct based on a national model code, the Bill provides that relevant authorities may adopt codes of conduct but it does not oblige them to do so. The Bill provides for codes of conduct which relevant authorities have adopted under the provisions of section 50 or 51 of the Local Government Act 2000 to cease to have effect, and for undertakings to comply with them to cease to have effect when the relevant codes cease to have effect. An authority will be able to revise its code of conduct, adopt a replacement code or simply withdraw its code without replacing it. Such voluntary codes only apply to members and co-opted members when they are acting in that capacity.

A relevant authority may publicise its adoption, revision or withdrawal of a code of conduct in any manner it considers appropriate.

## **Alleged breaches of codes of conduct**

4. The detailed statutory provisions contained in the Local Government Act 2000 and the Standards Committee (England) Regulations 2008, which specify how local authorities in England must deal with allegations of breach of their code of conduct are to be repealed. Instead, if a relevant authority receives an allegation that a member has acted in breach of the code, it must consider whether it is appropriate to investigate it and, if it decides that an investigation is appropriate, it must investigate in the manner it thinks fit. If an authority finds that a member or co-opted member has failed to comply with its code of conduct, the Bill says that it may have regard to the failure in deciding what if any action to take. For example, a local authority might decide that it is necessary to censure a member or to restrict his or her access to the local authority's officers, premises and facilities.
  
5. The case of *R v Broadland District Council, ex parte Lashley* [2001] All ER (D) 71 (Feb) has shown that a local authority would be able to use sections 111 and 101 of the Local Government Act 1972 to take such actions if it took a reasonable decision that this was calculated to facilitate, or was conducive or incidental to its arrangement for the discharge of any of its functions. (In the Lashley case, action taken to impose restrictions on a councillor was found to have been calculated to facilitate, and was conducive or incidental to the local authority's functions of efficiently maintaining its administration, and furthering the welfare of its employees.) However, in practice it may be very difficult for any local authority to enforce any requirements or restrictions it decides to impose on a member if the member chooses to ignore them.

## **Members' interests**

6. The potential for local authority members to misuse their position to further their own interests or for there to be a perception that this is so, is a matter over which the Government has sought to retain some control. The Localism Bill gives the Secretary of State the power to introduce regulations requiring monitoring officers to establish and maintain registers of interests. (Section 81 of the Local Government Act 2000 currently requires monitoring officers to establish and maintain such registers but amendments in the Localism Bill would mean that this requirement would apply only to Welsh authorities.) The regulations may: specify interests to be registered; require members to disclose interests; prevent or restrict members' participation in business if they have an interest; allow authorities to provide for dispensations from such restrictions; provide for authorities to impose sanctions on members and co-opted members for failure to comply (these sanctions may not include suspension or disqualification), and require the register to be publicly available.

7. The Localism Bill makes provision for criminal offences if a member or co-opted member acts in breach of regulations relating to members' interests by: failing to register interests; failing to disclose them before participating in business of their authority relating to the interest, or taking part in business of their authority contrary to any prohibition or restriction imposed by the relevant regulations. A prosecution may only be instituted by or on behalf of the Director of Public Prosecutions. Proceedings may be brought within twelve months of the prosecutor having sufficient evidence to warrant the proceedings but no later than three years after the offence or, if there is a continuous contravention, after the last date on which the offence was committed. A person who is convicted of such an offence is liable to a fine not exceeding level 5 on the standard scale. A court may also make an order to disqualify such a person from being or becoming a member or co-opted member for a period of up to five years.

### **Standards Committees**

8. The requirement for local authorities in England to establish standards committees will be abolished through provisions in the Localism Bill.
9. The functions of standards committees in England to consider applications for posts to be exempt from political restriction will become the responsibility of the head of paid service, as a result of amendments which the Localism Bill will make to section 3A of the Local Government and Housing Act 1989.

### **Predetermination**

10. The Localism Bill introduces provision to clarify that a decision maker is not to be regarded as having approached a decision with a closed mind if they have given a previous indication of their view on a matter. This applies when there is an issue of allegation of bias or predetermination which affects the validity of a decision. This is intended to ensure that councillors do not feel unable or uncertain about what they may do in terms of championing local issues.

### **Comments**

11. Local authorities and their members may welcome a move to arrangements where they have discretion as to how to regulate the conduct of their members. However, whilst the abolition of detailed requirements relating to matters such as investigations, hearings and reports may ease the pressure on their resources, they will need to find a way to ensure that they comply with their duty to promote and maintain a high standard of conduct. They will also need to deal with the implications of the new criminal offences relating to members' interests. The introduction of such offences may prove useful if it helps



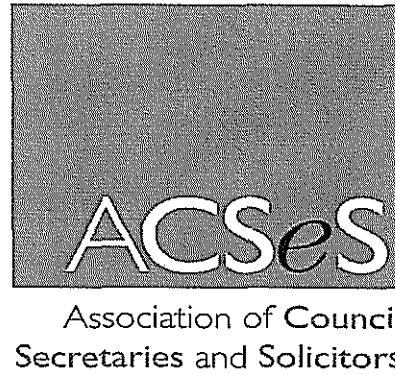
to deter members from misusing their position and to take action against any councillors who do so. However, there may also be a risk that people may be deterred from standing for election by fear that they may inadvertently breach the statutory requirements relating to members' interests and so incur a criminal record and disqualification from office. It can already be challenging for local authorities to attract a diverse range of members, as reports from organisations such as the Councillors Commission have shown. It would be unfortunate if actions which are intended to promote and uphold high standards of conduct were to have the effect of increasing this difficulty.

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### **MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT**

The Localism Bill published on 13<sup>th</sup> December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

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 but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

## **SUMMARY OF CHANGES PROPOSED IN THE BILL**

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.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

### THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established *The Seven Principles of Public Life* often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

### **FIDUCIARY DUTY OF COUNCILLORS**

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

### **REGISTERING INTERESTS**

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

### **CIVIL LAW**

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

**Misfeasance in public office** is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

## EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

## CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

## ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

**Undue influence:** Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

**Bribery:** Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

**Treating:** Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

**Personation:** Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

**Postal and proxy voting:** Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

**False information in nomination papers:** Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

**False information in relation to registration:** Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

**The Electoral Administration Act 2006** created two new offences which are:

**Supplying false information to the Electoral Registration Officer, and**

**Making fraudulent application for a postal vote**

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

### **AUDIT COMMISSION FOR LOCAL AUTHORITIES**

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

## **LOCAL GOVERNMENT OMBUDSMAN**

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

*"We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you"*

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

## **BIAS, PREDISPOSITION AND PREDETERMINATION**

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she 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 him/her) or gives an appearance of being biased, as judged by a reasonable observer.

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 which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination 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 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, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

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 has also not been included in the Localism Bill.



## **MISCELLANEOUS**

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

## **FURTHER CONTACT**

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**TITLE** Update on Complaints and Feedback  
**FOR CONSIDERATION BY** Standards Committee on 1 March 2011.  
**WARD** None Specific  
**GENERAL MANAGER** Susanne Nelson Wehrmeyer, Head of Governance and Democratic Services

**OUTCOME**

To inform and feedback results of the Initial Consideration Sub Committee

**RECOMMENDATION**

To note the report.

**SUMMARY OF REPORT**

There have been two new complaints considered by the Initial Consideration Sub-Committee since the last feedback report on 8 June 2010.

## Background

**Initial Consideration Sub-Committee meeting on 18/1/11 Reference CMPL02654**

Referred to the Monitoring Officer for other action

**Initial Consideration Sub-Committee meeting on 18/1/11 Reference CMPL03301**

Referred to the Monitoring Officer for investigation

## Analysis of Issues

There will be a verbal report.

<b>Reasons for considering the report in Part 2</b>
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If the Committee decides to discuss the specifics of individual cases it may be necessary to consider excluding the public if that would involve the disclosure of exempt information.
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<b>List of Background Papers</b>
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Initial Consideration Sub Committee decisions
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