

<b>TITLE</b>	<b>The Localism Act 2011– The Amended Standards Regime</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 22 March 2012
<b>WARD</b>	None Specific
<b>STRATEGIC DIRECTOR</b>	Susanne Nelson-Wehrmeyer, Director of Legal and Electoral Services

**RECOMMENDATION**

- 1) That the Standards Committee gives an initial view on the establishment, size and composition of a successor committee;
- 2) That an informal working group be established to consider the detail of a new Wokingham Borough Council Code of Conduct and supporting arrangements as follows:
  - a) 3 independent members of the Committee;
  - b) 2 elected members of the Committee, (one from each political group);
  - c) 1 parish member of the Committee;
- 3) That a member of the Wokingham Borough Council Executive be invited to join the working group or agree to being consulted as part of the group's work.
- 4) That the Standards Committee be formally asked to consider the draft Code of Conduct and supporting arrangements prior to adoption by the Council;

**SUMMARY OF REPORT**

This report describes the changes to the present Councillor Code of Conduct Regime arising out of the Localism Act.

## **Background**

### **1. The Localism Act 2011**

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was supposed to be 1 April 2012, but it is now expected to come into force on 1 July 2012.

### **2. Duty to promote and maintain high standards of conduct**

The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

### **3. Standards Committee**

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, but as there will still be a need to deal with standards issues and case-work it is proposed to continue to appoint a Standards Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result:

- 3.1 The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member votes against this proposal. The present restriction to only have one member of the Executive on the Standards Committee will cease to apply, (although in Wokingham no member of the Executive has ever sat on the Committee);
- 3.2 The current co-opted independent members will cease to hold office. However, it is possible to co-opt them onto the Committee as non-voting members. Notwithstanding their non-voting status, the retention of non councillors on the Committee would arguably increase public confidence in the independence of the new system. Informal contacts with colleagues in Berkshire have indicated they intend to follow this route.
- 3.3 An initial proposal is that the Borough Council establishes a Standards Committee comprising eight elected members of the Borough Council, (appointed in accordance with political proportionality and including one member of the Executive), three co-opted non-voting parish members and three co-opted non-voting independent members. The size of the Committee has been considered on the basis of the need to have a large enough group of committee members available to be able to constitute ad hoc sub-committees for the purposes of hearings, if required;
- 3.4 The statutory duty to promote and maintain high standards of conduct is not dissimilar to the Terms of Reference of the current Standards Committee, (attached as Appendix A) and whilst these will need to be amended it is felt they can usefully form the basis of the Terms of Reference of the new Standards Committee.

## **The Independent Person**

- 3.5 The Act establishes a new category of Independent Person (see below) who must be consulted at various stages. At the present time the situation around whether it will be possible for existing co-opted members to serve as Independent Persons is unclear. The wording of the Localism Act prohibited existing co-opted independent members from serving as Independent Persons for 5 years. However, it now appears that Ministers are minded to make transitional provisions for a Council to appoint a person as an independent person who although not a chairman or member of a standards committee at the time of appointment or thereafter, has held such a post within the last 5 years;
- 3.6 The new Independent Person may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee;

## **Parish Councils**

- 3.7 The Borough 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 cease to hold office. The Borough Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the Borough Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the Borough (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).
- 3.8 It is not felt that the establishment of a Joint Borough/Parish Committee is a realistic and practical option given the time available to put all the necessary formal arrangements and agreements in place and the possible unwieldiness of such a committee;

**Issue 1: The Borough Council must decide whether to set up a Standards Committee and the composition of it.**

## **4. The Code of Conduct**

The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles:

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

4.1 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles above. 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 is appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, consideration is being given by the Monitoring Officer to the preparation of a draft Code which would require registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

4.2 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

4.3 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 interest 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.

4.4 There are two practical options available in drafting a replacement Code of Conduct which are being considered by the Monitoring Officer. In either case it will be possible to amend the Code of Conduct subsequently if the need arises:

- Simply readopting Paragraphs 3 to 7 of the existing Code of Conduct;
- Building upon a draft a model Code of Conduct which has been developed by the Association of Council Secretaries and Solicitors

4.5 It will be necessary to also review supplementary documents to the Code of Conduct such as the Outside Bodies Protocol and Member/Officer Protocol.

**Issue 2: The Council has to decide what it will include in its Code of Conduct**

## **5. Dealing with Misconduct Complaints**

### **Arrangements**

- 5.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by Borough Council members and by Parish Council members and such complaints can only be dealt with in accordance with such “arrangements”. So 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.
- 5.2 An advantage of the Act is that it repeals the requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own locally sensitive process, which can include delegation of decisions on many complaints to the Monitoring Officer. There is therefore, the opportunity to seek to address some of the inflexibility and at time unhelpful bureaucracy of the previous system which has been the subject of concern of some Members.
- 5.3 As the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it will be necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

### **Decision whether to investigate a complaint**

- 5.4 In the majority of circumstances, the Standards for England guidance on 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 the Localism Act gives to delegate to the Monitoring Officer the initial decision on whether a complaint, and the ability to refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. 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/she should be accountable for its discharge. For this purpose, it would be appropriate that he/she make a quarterly report to Standards Committee, which would enable him/her to report on the number and nature of complaints received and draw to the Committee’s attention to areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

### **“No Breach of Code” finding on investigation**

- 5.5 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 Hearings and Assessment Sub-Committee and the Sub-Committee 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 Standards Committee if he/she feels appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him to get an overview of current issues and pressures, and that the Monitoring Officer provide a summary report of each such investigation to Standards Committee for information.

### **“Breach of Code” finding on investigation**

5.6 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

5.7 In all other cases, 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 Panel constituted as a Sub-Committee of 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 Hearing Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result

**Issue 3: The Council has to put in place its own arrangements for Code of Conduct Complaints against Borough and Parish Members to be submitted and administered.**

## **6. Actions in Response to a Hearing Finding of a Failure to Comply with the Code**

6.1 The Act does not give the Council or its Standards Committee any of the punitive powers to impose sanctions such as suspension or requirements for training or an apology on Members that were enshrined in the previous regime. So, where a failure to comply with the Code of Conduct is found, the range of actions that the Council can take in respect of the Member is limited and must be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than “punishing” the Member concerned. In practice, this might include the following:

- Reporting its findings to Council or to the Parish Council for information;
- Recommending to the Member’s Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;

- Instructing 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);
- Withdrawing (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding (or recommend that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

6.2 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. The only way around this would be to constitute a Joint Committee and Sub-Committee with Parish Councils which as set out above is not considered to be practical.

### 6.3 Appeals

There is no requirement to put in place any appeals mechanism against such decisions, (partly because the list of sanctions is limited). The decision would be open to judicial review by the High Court if it was found to be blatantly unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

**Issue 4: The Council needs to decide what range of sanctions it wishes to adopt.**

## 7. Independent Person(s)

The "arrangements adopted by the Council must include provision for the appointment by the Council of at least one Independent Person. The role of the Independent Person is not a continuation of the role of independent members of Standards Committees under the present regime.

### 7.1 'Independence'

The Independent Person must be appointed through a process of public advertisement, application, and appointment by a positive vote of the majority of all Members of the Borough Council, (not just of those present and voting). As set out in para 3.3 there is some uncertainty around the appointment of former independent members of Standards Committee as Independent Persons, but what is clear is that a person will not be considered to be independent if they have been, within the last five years, an elected or co-opted Member of Borough

Council, or any Parish Councils in our area, an Officer or a relative of the above.

## 7.2 Functions of the Independent Person

The functions of the Independent Person are that:

- They must be consulted by the Council 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 Council in respect of a standards complaint at any other stage; and
- They may be consulted by a Member or co-opted member of the Borough Council or of a Parish Council against whom a complaint has been made.

7.3 The last two bullet point above causes 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.

## 7.4 How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person.

## 7.5 Remuneration

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.

7.6 Initial Conversations are taking place with Berkshire colleagues around the possibility of a joint Independent Person recruitment advert and joint agreement on the remuneration.

**Issue 5: The Council needs to recruit an Independent Person and decide upon the remuneration to be paid to the Independent Person.**

## 8. Members' Interests

### The Register of Members' Interests

8.1 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 register for Parish Councils, which also have to be open for inspection at the Borough Council Offices and on the Borough Council's website.

- 8.2 At present we do not know what Disclosable Pecuniary Interests 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.
- 8.3 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.
- 8.4 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 Borough Council offices and on the Borough Council's website and, where the Borough 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.

#### **Registration on Election or Co-option**

- 8.5 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register has been made a criminal offence, but would not prevent the member from acting as a member.
- 8.6 In so 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.
- 8.7 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.
- 8.8 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.
- 8.9 As is the situation now with prejudicial interests, the Act imposes a duty on Members to disclose Pecuniary Interests and withdraw under certain circumstances.

**Issue 6: It will be necessary for the Council to adopt measures within Rules of Procedure in respect of withdrawal from meetings.**

## **Sensitive Interests**

8.10 The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests.

## **Dispensations**

8.11 Under the Act, it will be possible for dispensations to be granted by a Standards Committee, Sub-Committee of a Standards Committee or a Monitoring Officer.

**Issue 7: The Council needs to put in place arrangements for new registers of Members Interests at Borough and Parish Level.**

**Issue 8: The Council needs to put in place arrangements to administer dispensation requests.**

## **9.0 Indicative Timetable for Implementation of the New Standards Regime and Recommendations for the next steps.**

9.1 Standards for England, the quango with responsibility for the operation of the present Code of Conduct regime was abolished under the Localism Act on 31 January 2012 and transitional arrangements are now in place.

9.2 In order to develop the new Code of Conduct and supporting documents setting out how complaints will be considered, it is recommended that an informal private working group of the present Sub-Committee be established in private to consider documents as they are drafted. The Code and supporting documents would then be brought back to the Standards Committee for formal consideration in public prior to being submitted to full Council for adoption.

9.3 It is suggested that the working group be comprised of:

- 3 independent members of the Committee;
- 2 elected members of the Committee, (one from each political group);
- 1 parish member of the Committee;
  
- That a member of the Wokingham Borough Council Executive be invited to join the working group or agree to being consulted as part of the group's work.

9.4 The table below sets key dates for the delivery of the new regime based upon the current Council meeting dates. However, it is questionable whether such a significant piece of work can be completed within the timescales necessary for a Council decision in May bearing in mind the impact of the elections, public holidays leading up to Annual Council and that the regulations on DPs have yet to be published. Therefore, it is likely that it will be necessary to convene an extra ordinary full Council meeting in June 2012.

<b>Establishment of a Code of Conduct Informal Working Group.</b>  (Role: To draft the revised Code of Conduct regime-	w/c 19 March 2012 – Standards Committee
<b>Code of Conduct Informal Working Group Meetings</b>	26 March to 13 April
<b>Consultation on draft New Code and arrangements with Political Groups</b>	16 April to 30 April.
<b>Consideration of New Code and arrangements by Standards Committee and recommendation to Council</b>	Week Commencing 7 May 2012
<b>Agreement of New Code of Conduct, Arrangements for Dealing with Complaints, Procedure for Investigations and Procedure for Hearings</b>  <b>Appointment of Independent Person</b>  <b>Appointment of Newly Constituted Standards Committee</b>	24 May 2012 – Annual Council
<b>Expected Implementation of the Localism Act Standards Regime – new arrangement become live</b>	1 July 2012

<b>Reasons for considering the report in Part 2</b>
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None
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<b>List of Background Papers</b>
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Localism Act – Chapter 7 Standards
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## Appendix A

### 9.1.5 Role and Function

The Standards Committee will have the following roles and functions:

- a) promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives;
- b) assisting the Councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- c) advising the Council on the adoption or revision of its Members' Code of Conduct;
- d) monitoring the operation of the Members' Code of Conduct, the Officers' Code of Conduct and the Council's 'whistleblowing' policy and any other appropriate codes of conduct and procedures;
- e) advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- f) granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- g) the receipt and assessment of complaints made against Members, the review of local assessment decisions and undertaking of hearings following investigations in accordance with the relevant statutory Regulations;
- h) the exercise of (a) to (g) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils;
- i) the presentation of an annual report by the Chairman of the Standards Committee to Council