

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

21st March 2012

LOCALISM ACT 2011 - NEW STANDARDS REGIME

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| Relevant Portfolio Holder | Councillor Mark Bullivant |
| Portfolio Holder Consulted | Councillor Mark Bullivant |
| Relevant Head of Service | Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer |
| Ward(s) Affected | All Wards |
| Ward Councillor(s) Consulted | N/A |
| Non-Key Decision | |

1. SUMMARY OF PROPOSALS

- 1.1 The Localism Act 2011 introduces fundamental changes to the system of regulation of the standards of conduct for elected and co-opted Councillors (with voting rights).
- 1.2 This report describes the changes and sets out proposals for consideration by the Standards Committee in order that they may make recommendations to Full Council on how the new regime may be implemented.

2. RECOMMENDATIONS

- 2.1 Members of the Committee are being asked to consider whether to recommend to the Full Council that an appropriate way of discharging its duty to promote high standards of behaviour in public life would be to set up a Standards Committee and if so what the composition of that committee would be.
- 2.2 Members of the Committee are being asked to consider and approve in principle the content of the Draft Code of Conduct at Appendix 1 to this report and to make recommendations to Full Council in this regard.
- 2.3 Members are asked to consider the draft process for managing standards complaints at Appendix 2 to this report and to make recommendations to Full Council in this regard.
- 2.4 Members are asked to consider the proposed role of Parish Representatives on the Standards Committee and to make recommendations to the Full Council in this regard.
- 2.5 Members are asked to consider the proposals for discharging the requirement under the Localism Act for an Independent Person(s) and to make recommendations to Full Council in this regard.
- 2.6 Members are asked to consider the proposals for managing dispensations and to recommend a process for managing the same to Full Council.

3. KEY ISSUES

Financial Implications

- 3.1 It is anticipated that the Council will wish to include the roles associated with the new regime within the scheme of Members' allowances and that a payment will be made to the Independent Person(s) appointed in accordance with section 28 (7) of the Localism Act 2011.
- 3.2 The costs associated with this will need to be determined by Full Council but it is not anticipated that this will be in excess of the budgets currently allocated for this purpose.

Legal Implications

- 3.3 The Localism Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will therefore no longer be a requirement for a Standards Committee, however there will still be a requirement to deal with standards issues and case work. It will be necessary therefore for the Standards Committee in its current structure to be disbanded and the proposal is that it be replaced by an ordinary Committee of the Council established to deal with Standards issues.
- 3.4 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a Member or co-opted Member of the authority (or Parish Council within the authority's area) has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- 3.5 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (or a Member, or co-opted Member of a Parish Council) against whom an allegation has been made.

Service / Operational Implications

- 3.6 The Localism Act fundamentally changes the way in which standards of conduct for elected and co-opted Councillors are regulated.
- 3.7 Whilst the Council will retain a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members the new provisions will enable Local Authorities to introduce a more flexible approach as to how this may be best achieved.

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- 3.8 Members will be aware that under the current regime the Council has a statutory obligation to appoint a Standards Committee and the process by which that Committee operates is strictly prescribed by the relevant regulations and guidance.
- 3.9 Whilst there is no requirement under the Localism Act for a statutory Standards Committee in its current form there is a duty for the Council to maintain and promote high standards in public life and Council must have a process for managing complaints in this regard.
- 3.10 It would therefore be logical for the Council to consider the creation of a normal Committee of the Council to enable the Council to properly discharge its duty to maintain and promote high standards in public life.

Standards Committee

- 3.11 As referred to in paragraph 3.3 the newly created Standards Committee will operate as a normal committee of the Council. It is anticipated that the implementation date for the new style committee will be 1st July 2012 but this has not yet been formally confirmed as the relevant regulations and guidance have yet to be issued by the government.
- 3.12 Members should note that the new style committee will not be able to operate with the unique features that were afforded to it in under the previous regime. In other words the composition of the committee will be governed by the normal rules relating to political proportionality and the current restriction that allows only one member of the Cabinet/Executive to sit on the Standards Committee will cease to apply.
- 3.13 The current Independent Members of the Standards Committee will cease to hold office and the Act introduces a new category of Independent Person whose role is detailed under a separate heading later in this report.
- 3.14 The Council will continue to have responsibility for dealing with standards complaints against elected and co-opted Councillors at District level and will continue to have responsibility for dealing with standards complaints against Members of Parish Councils, but the current Parish Council Representatives will cease to hold office.
- 3.15 It is important therefore for members of the Committee to consider how best to enable Parish involvement in the process moving forward so as to ensure that the Council's duty to promote high standards of behaviour within Parish Councils is achieved.
- 3.16 For the purposes of this report members of the Committee are being asked in the first instance to consider whether to recommend to the Full Council that an appropriate way of discharging its duty to promote high standards of behaviour in

public life would be to set up a Standards Committee and if so what the composition of that committee would be.

The Code of Conduct

- 3.17 The Council will be required to adopt a Code of Conduct.
- 3.18 Recognising that it is important to ensure that all Councillors whether County, District or Parish are clear in relation to their obligations under a Code of Conduct the Monitoring Officers across the County have worked together to produce a draft Code of Conduct and it is proposed that this be adopted by all Councils whether County, District or Parish in an attempt to support Councillors in this regard. A copy of the draft Code of Conduct for Worcestershire is attached at Appendix 1. Members are asked to note that the Code is still in draft format and discussions to agree a final version are on-going. Whilst the first part of the draft Code dealing with the conduct expected of Members can be regarded as more or less finalised, the second section on interests will be subject to further changes because the related regulations and guidance are not yet available (as referred to at 3.10 above).
- 3.19 Members of the Committee are advised that the Monitoring Officer has also spoken to a representative from the Worcestershire County Association of Local Councils (CALC) regarding the proposal of adoption of a Code of Conduct for all authorities in Worcestershire. Early discussions have revealed that it would be the intention of CALC to recommend to Parishes that they also adopt the same Code of Conduct for the same reasons as outlined above.
- 3.20 It is fair to say that the majority of problems associated with the current standards regime have resulted as a consequence of the process for administering and determining complaints rather than as a consequence of the Code itself.
- 3.21 For this reason, and the fact that love it or hate it Members are now very familiar with the Code, Officers have used the existing Code as the starting point when drafting the new one and it is proposed that the ten principles of public life will continue to form the basis for the levels of behaviour expected.
- 3.22 In addition the new Code will need to set out the requirements in relation to the registration and declaration of Interests – these will now be described as “Disclosable Pecuniary Interests”, “Other Pecuniary Interests” and “Non Pecuniary Interests”.
- 3.23 As referred to above, it is not yet possible for Officers to include within the draft Code the definitions of these classifications of interest as the regulations that will provide these have not yet been published by the government. Officers will continue to update members as these issues become clearer.

- 3.24 In the meantime Officers have worked to establish the most straight forward mechanism whereby Members can register and declare interests under the new regime and these appear within Part 2 of the draft Code that appears at Appendix 1 for members' consideration.

Register of Members' interests and disclosure of interests

- 3.25 In accordance with the Localism Act the Monitoring Officer is required to establish and maintain a register of interests of Members and co-opted Members of the District/Borough Council and the Parish Councils.
- 3.26 The Localism Act provides that the register must contain "Disposable Pecuniary Interests". At this stage the draft Code reflects this requirement but does not extend that duty to either "Non Pecuniary Interests" or "Other Pecuniary Interests". Again without definition of the categories at present it is difficult to assess what the appropriate levels of registration should be.
- 3.27 Members are advised that for the purposes of interests falling into the category of "Disposable Pecuniary Interests" that the requirement to register these will extend not only to the Members themselves but also to:
- Their spouse or civil partner;
 - A person with whom they are living as husband and wife; or
 - A person with whom they are living as if they were civil partners,

provided that the Member concerned is aware that the other person listed above has the interest.

- 3.28 Every elected or co-opted person must notify the Monitoring Officer within 28 days of being elected or co-opted onto the authority of all current disposable pecuniary interests and for the purposes of this report the Monitoring Officer is proposing that Members continue to update this as an ongoing requirement throughout their term of office.
- 3.29 Failure to register any such interest or the provision of misleading information on registration without reasonable excuse will be a criminal offence, potentially carrying a Scale 5 fine (£5,000) and/or disqualification from being a Councillor for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions. Members are advised that the Monitoring Officer is in discussions with the Police in order to establish how this will actually happen in practice and in order that Members can be properly supported to ensure that wherever possible this can be avoided.
- 3.30 Members are advised that the Localism Act is far from straight forward in its approach to interests and the disclosure thereof and for this reason the Monitoring Officer has been working closely with County colleagues to establish

a process for registering and disclosing interests that is open and transparent, clear to follow and meets the requirements of the Act.

- 3.31 Members are advised that for the purposes of this report Officers will not be able to provide the detail that would be associated with the categorisation and disclosure of interests as this is not possible to determine until the regulations on these issues have been published.

Sensitive Information

- 3.32 Members will recall the ability under the current regime for Members to register and declare the existence of sensitive interests without the need for public disclosure in very limited and specific circumstances. The Localism Act continues to recognise the need for this and Members will note section 14 within the draft new Code at Appendix 1 that deals with this point.

Dispensations

- 3.33 The existing provisions on dispensations are significantly changed by the Localism Act.
- 3.34 The new arrangements allow for a dispensation to be granted on the following grounds –
1. That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would impede the transaction of business. In practice this would mean that the decision-making body would be inquorate as a result;
 2. That without the dispensation the representation of different political groups on the body transacting business would be so upset as to alter the outcome of any vote on the matter;
 3. That the Council considers that the dispensation is in the interests of persons living in the authority's area;
 4. That without a dispensation no member of the Cabinet/Executive would be able to participate on the matter; or
 5. That the authority considers that it is otherwise appropriate to grant a dispensation.
- 3.35 Any grant of a dispensation must specify how long it lasts for, up to a maximum of four years.
- 3.36 Where the Local Government Act 2000 required that dispensations be granted by the Standards Committee the Localism Act gives discretion for this power to be delegated by Council to the Standards Committee or to the Monitoring Officer.

3.37 For the purposes of this report it is proposed that in relation to points one and two above that the delegation be made to the Monitoring Officer in consultation with the Independent Person, with an appeal to the Standards Committee thus enabling dispensations to be granted in a timely and efficient manner where appropriate. Three and five would remain with the Standards Committee in consultation with the Independent Member. In relation to point four, with reference to Cabinet decisions provision can be made in the Scheme of Delegations to allow the Leader to take the decision by using his powers as a "Strong Leader". Were the Leader himself to be unable to act, the matter would have to be referred to the Standards Committee for a dispensation as per points 3 and 5.

Independent Person(s)

3.38 The Act requires the Council to appoint at least one Independent Person.

3.39 Members are advised that under the new arrangements the office of current Independent Members of the Standards Committee will cease and that a new category of Independent Person is established.

3.40 Members should be aware that the Independent Person role is quite different from that carried out by Independent Members of the current Standards Committee and that the new role will become a consultative one for the Monitoring Officer, the Committee and the person against whom an allegation has been made.

3.41 Independent Persons will need to be appointed by advertisement and application, and there are strict rules governing the category of person who would be eligible to fill this role.

3.42 Members are advised that on the face of it current Independent Members would not be eligible to apply although members are advised that the Monitoring Officer as been working with County colleagues to determine whether it would be beneficial to establish a pool of Independent Persons to support all Districts and the County in this regard. If members were minded to recommend that this be an appropriate way to proceed then it may enable the expertise of current Independent Members to be retained throughout the County albeit restricted in relation to the Council for which they can act. The Monitoring Officer will advise the Committee in relation to this in more detail at the meeting.

3.43 It is clear that the arrangements are moving to enable Councils to establish a mechanism for local resolution where it is possible to do so and members are advised that the Monitoring Officer is keen to establish as many opportunities for the use of the new Independent Person throughout the process to enable this to be achieved.

New arrangements for dealing with Standards Allegations

- 3.44 In addition to the adoption of a Code of Conduct, the Council will also have a duty to have in place arrangements to deal with complaints into Member conduct both at District and Parish level.
- 3.45 The Monitoring Officer, Deputy Monitoring Officer and Ethical Standards Officer have worked together to establish a draft process for managing standards complaints and recognise that members of the Standards Committee will wish to make recommendations to Full Council in this regard. An outline draft process is attached at Appendix 2 to this report for members' consideration, with the intention that a more detailed mapping of the process be discussed at the meeting. Members are asked to note that the current arrangements for Assessment Sub-Committees will no longer apply under the new regime. Where final hearings do prove necessary, Members may want to consider and recommend to Full Council the use of panels as opposed to the entire committee deciding complaints as at present.
- 3.46 Members will note from the draft process that Officers have attempted where possible to ensure that local resolution options are used and that the Leaders of Political Groups and the Chairmen of Parish Councils are included in conjunction with the new Independent Person to encourage mediation and support measures to be used when the circumstances allow, and that investigations are reserved for those cases where there would appear to be no other practical and effective alternatives.

Sanctions

- 3.47 The Act does not give the Council or its Standards Committee any powers to impose sanctions so it would appear that where a complaint is upheld under the new arrangements that the Council will have a number of options available to it to secure the continuing ability of the Council to discharge its duty to uphold and promote high standards of behaviour in public life effectively.
- 3.48 In practice this is going to involve more practical steps at a local level to help and support Councillors in a great proportion of the complaints that arise and members may wish to consider the following for local adoption;
- Reporting findings to Full Council (or to the Parish) for information;
 - Agreement by the Member to apologise or a recommendation to the Member's Group Leader that he facilitates an apology from the Member;
 - Recommending to the Member's Group Leader (or in the case of ungrouped Members to the Council or to Boards or Committees) that the Member be removed from any or all of the Council's Committees, Boards or Sub-Committees;

- Recommending to the Leader of the Council that the Member be removed from the Cabinet/Executive, or removed from particular Portfolio responsibilities;
 - Instructing the Monitoring Officer to (or recommending that the Parish) arrange training for the Member;
 - Withdrawing (or recommending to the Parish that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email facilities and internet access;
 - Excluding (or recommending that the Parish 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.
- 3.49 There is a particular difficulty in respect of Parish Councils as the Localism Act gives the Council or its Standards Committee no power to do any more in respect of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of a Member.
- 3.50 Parish Councils will be under no obligation to accept any such recommendation notwithstanding the Council's duty to uphold the standards of behaviour within the Parish Councils and their duty to investigate any complaints against Parish Councillors or co-opted Councillors.
- 3.51 Members of the Committee are advised that the Monitoring Officer has discussed this issue in detail with the representative from CALC on behalf of the other Districts and the County.
- 3.52 It is proposed as a consequence of those discussions that members consider that an effective way of managing this situation would be to continue to involve Parish Council Representatives on the Standards Committee (albeit in a non-voting capacity) and to ensure that those Representatives are involved in any hearings that involve Parish Councillors.
- 3.53 In addition to this it is proposed that the early resolution stages include Parish involvement in Parish matters and where there are positions of conflict involved, if agreed, a CALC Representative.
- 3.54 In any event it is proposed that were members of the Committee minded to agree this recommendation that the arrangements be reviewed after 12 months to monitor effectiveness.
- 3.55 There will be criminal sanctions if a Councillor:
- Fails to register Pecuniary Interests within 28 days of taking office;
 - Fails to declare a Pecuniary Interest at meetings;
 - Fails to register Pecuniary Interests within 28 days of disclosure;

- Participates in any discussion or votes on a matter in which the Member has a Pecuniary Interest; or
- Makes an Executive decision in which the Member has a Pecuniary Interest.

3.56 As already outlined within this report these matters will be handled by the Police and Crown Prosecution Service with offences punishable by a fine not exceeding £5000. The Court may also disqualify a Councillor for a period not exceeding five years.

3.57 Members are advised that the new arrangements will include a process for dealing with such complaints recognising that it will be necessary in some instances for an internal resolution to be sought in conjunction with the criminal process.

Appeals

3.58 There is no right of appeal against a decision within the new arrangements although the decision would be open to judicial review by the High Court if it was patently unreasonable, or if it was taken improperly, or if it sought to impose a sanction which the Council had no power to impose.

Implementation Date and Transitional Arrangements

3.59 The regulations to cover implementation and transitional arrangements have not yet been published. However, it is anticipated that the transitional phase will commence on 1st April 2012 (referred to as the "Appointed Day"). With effect from that date Standards Committee will no longer be able to impose suspensions and the ability to make appeals to the First -tier Tribunal will cease. Sanctions will be limited to censure, training, withdrawal of facilities etc. Authorities will have a two month period starting from 1st April to process and finalise any outstanding complaints. It is not clear whether it will be possible for any new complaints to be made under the old system after 1st April. The new style Standards Committee and new obligations under the Localism Act will come into effect from 1st July 2012.

Customer / Equalities and Diversity Implications

3.60 The Council is aware that any process for managing standards of behaviour for elected and co-opted Councillors must be accessible to the public. It is therefore proposed that an impact assessment will be carried out on the complaints process when established to ensure accessibility. In addition it is proposed that the members of the Council's Equality and Diversity Forum receive a presentation in relation to the new arrangements for comment.

3.61 Members are advised that the new arrangements will be publicised on the Council's website and that Officers will work to ensure that members of the public

are made aware of the process for making a complaint through all existing community engagement events.

4. RISK MANAGEMENT

- 4.1 The Council has identified Member to Member relations as a corporate risk to the authority and it has also identified the reputational issues that are associated with this.
- 4.2 The Chief Executive and the Monitoring Officer work closely with the Leaders of all political groups to ensure where possible that effective working relationships with all Members can be maintained and from time to time it is necessary for specific measures to be introduced to enable this to continue effectively.
- 4.3 All three Statutory Officers meet on a monthly basis to assess the risks associated with this and to ensure that any local issues are managed effectively and that support is given to all Members of the Council where appropriate.
- 4.4 Members are advised that they are obliged to consider and determine appropriate mechanisms for managing complaints and to discharge their duty to promote high standards in public life, at District and Parish level, and that whilst the process for doing this is no longer governed by statute that a process will nevertheless need to be adopted and that the proposals within this report would enable the Council to discharge this.

5. APPENDICES

Appendix 1 - Draft Code of Conduct

Appendix 2 - Draft process for managing standards complaints

6. BACKGROUND PAPERS

Relevant sections of the Localism Act 2011.

7. KEY

None

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