

	
STANDARDS COMMITTEE	20 January 2012
Report of the Monitoring Officer	

Abolition of the Standards regime

1 The Localism Act 2011

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The Department for Communities and Local Government has recently announced that these will take effect fully from 1st July 2012 although Standards for England is expected to be abolished on 31st March and take no more cases after 31st January.
- 1.2 Earlier reports had suggested that the new arrangements may be implemented as early as April and for that reason an urgent, informal briefing for Standards Committee members took place in December. This report describes the changes and recommends the actions required to implement the new regime. In doing so it picks up on comments made during the informal briefing.

2 Duty to promote and maintain high standards of conduct

- 2.1 Every relevant local authority (which includes parish councils, fire and rescue authorities and police authorities in England or in Wales) will be placed under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. Previously this was the duty of the Standards Committee.

3 The Code of Conduct

- 3.1 The Act contains a duty for each relevant authority to adopt a code of conduct for their members and co-opted members. Previous versions of the Bill provided a power not a duty to make such arrangements. Parishes may adopt the City Council's Code and assume it complies with the law!

- 3.2 The Code must comply with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. This is likely to mean the Code containing some general principles similar to those in paragraphs 3 to 7 of the existing Code – although no doubt the drafting could be less legalistic.
- 3.3 The Code must contain the provisions which the Authority consider appropriate in respect of the registration and declaration of pecuniary and non pecuniary interests. However, the Act also requires the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs). Regulations will provide a definition of DPI’s.
- 3.4 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.
- 3.5 It is for full Council to adopt or replace the Code and its adoption must be publicised. How that is done is left to each Council’s discretion.
- 3.6 There is work going on nationally supported by ACSeS and NALC to develop recommended Codes. If time allows it would seem sensible to at least consider this work before starting to draft a local Code. The Act also requires that the Code contains “appropriate” provisions registering and declaring interest other than DPI’s. Until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

3.7

Recommendation One

It is recommended that the Monitoring Officer be instructed to bring a draft Code to the next meeting of the Committee having considered any national models which may have been produced.

4 Standards Committee

- 4.1 The Act removes the requirement to have a statutory Standards Committee. However, there will still be a need to deal with standards issue such as:

- Promoting high standards and monitoring the Council's ethical framework
- Granting dispensations from declaring interests
- Dealing with case work – the City Council has a duty to put in place arrangements for investigating and making decisions in respect of complaints against its own and against Parish Councillors.

4.2 Any new arrangements have to comply with the normal legal requirements for Council's dealing with non- executive functions. The unique features available to the statutory Standards Committee including the right of independent Members to participate in decision making, would not exist. The question of how complaints should be handled is addressed later in this report. However, it is assumed that there would still be a need for at least one Sub Committee to deal with some aspects of standards complaints and that this group should be drawn from the membership of a parent Committee. There are various options available for that parent Committee including:

Option one - an Ordinary Committee of the Council

- 4.3 This would be politically balanced, only City of York Councillors would have voting rights but it could have additional co-opted members (including Parish Councillors) on a non voting basis. The City Council could delegate decision making responsibilities to such a Committee for granting dispensations and determining what action to take where the Code has been found to have been breached. Parish Councils could likewise delegate their decision making responsibilities to such a Committee. If a Parish Council chose not to delegate its responsibilities then the Committee would only be able to offer advice to the Parish Council on dispensations and on sanctions to be applied.
- 4.4 The Committee could be a separate Standards Committee or the functions could be assigned to an existing Committee, with the Council's Audit and Governance Committee being the obvious choice. There would be some small financial savings and savings in administrative time in adopting this option. Questions would though need to be asked as to whether that Committee has the capacity to take on additional work and whether in doing so any focus would be lost on either standards or on the Committee's traditional areas of responsibility.

Option Two – a Joint Committee of the City Council and one or more Parish Councils

- 4.5 This would have the advantage of allowing any Parish Council which was a party to the Joint Committee to appoint voting members. Non Councillors could be co-opted but without a vote. A Joint Committee which included representatives of all the Parish Councils would though be very large – especially as the City Council might be expected to require a proportionate scale of membership. Individual members would deal with case work infrequently, expertise and consistency would be difficult to achieve. An alternative would be to try to replicate the present arrangements whereby a smaller number of Parish Councillors are identified for appointment after consultation with all the Parish Councils.
- 4.6 There are at least two ways of trying to achieve this – both of which are unsatisfactory to some extent. The first would be for the Joint Committee to be established with all the Parish Councils but with an agreement that a limited number would make appointments. This would be an unusual arrangement for a joint committee but a lawful one. The disadvantage of this is that, unlike with the current arrangements, there would be nobody with the final say as to membership in the absence of consensus.
- 4.7 An alternative would be for there to be consultation with the Parishes as to who the Parish representatives should be – much as has happened with the existing system. The Committee would then be formally constituted with the Parish Councils whose Members were to be appointed to the Committee. Other Parish Councils would be able to delegate functions to the Joint Committee. The Committee could also include non voting independent Members. This would, however, leave a difficulty that any change in parish representation would necessitate the establishment of a new Joint Committee unless the replacement came from the same Parish.

Option Three – An Advisory Committee or Working Group

- 4.8 This would be a very flexible option in terms of membership and voting rights but it would have no decision making powers. The work of the current Standards Committee involves few actual decisions other than in respect of dispensations. Parish Councils may choose to deal with dispensations themselves and, given their relative rarity, the City Council could easily accommodate that responsibility elsewhere in its Committee structure. However, any Sub Committee dealing with case

work would also only be advisory. That would not meet the requirement in the Act to have “arrangements under which decisions on allegations can be made”. Introducing arrangements where an advisory Committee reported to a person or body with decision making powers is theoretically possible but would give rise to substantial issues of natural justice.

4.9

Recommendation Two

It is recommended that the Standards Committee indicates support for the following proposal:

- a. that the City Council establish a separate Standards Committee*
- b. That the Monitoring Officer be asked to bring draft terms of reference to the next meeting of the Committee*
- c. The Committee consist of [eight] members of the City Council*
- d. That the Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members of the Committee*

5 Dealing with Misconduct Complaints

“Arrangements”

- 5.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of the Code of Conduct both by City Council members and by Parish Council members.
- 5.2 The Act repeals the requirements for separate Assessment, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

Decision whether to investigate a complaint

- 5.3 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. However, the Monitoring Officer had no real discretion over whether a case was presented to the Assessment Sub Committee where there was a clear complaint that the Code may have breached.
- 5.4 It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation. The Act introduces a new figure – the “Independent Person” – and it would seem appropriate to require the Monitoring Officer to consult the Independent Person at least before deciding not to investigate a complaint. The Monitoring Officer would retain the ability to refer particular complaints to the Standards Committee where he 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.
- 5.5 If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a regular report to the Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee’s attention 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

- 5.6 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 Consideration Sub-Committee and the Sub-Committee take 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 feels appropriate. Summaries of any such cases could be presented to the Standards Committee for information.

“Breach of Code” finding on investigation

- 5.7 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may be another opportunity for local resolution, without the need for a hearing. It is suggested that the Monitoring Officer should be given the power to agree to such a resolution subject to the complainant being satisfied and the Independent Person being consulted.
- 5.8 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary to hold a hearing to determine whether the member had failed to comply with the Code of Conduct and what action, if any, was appropriate as a result.

Action in response to a Hearing finding of failure to comply with Code

- 5.9 The Act does not give the Council or its Standards Committee any powers to impose sanctions. Work is being undertaken at a national level on the subject of sanctions but the following would seem to be potentially available to the Sub Committee:
- 5.9.1 Reporting its findings to Council [or to the Parish Council] for information;
 - 5.9.2 Recommending to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 5.9.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 5.9.4 Instructing the Monitoring Officer to [or recommend that the Parish Council] offer to arrange training for the member;
 - 5.9.5 Removing (where power to do so has been delegated) or recommending to the Council that the member be removed from outside appointments to which he/she has been appointed or nominated by the authority;

5.9.6 *Withdrawing [or recommending 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*

5.9.7 *Excluding 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.*

5.10 If, as has been previously recommended, the Council constitutes its Standards Committee as an Ordinary Committee and its hearing panel as an Ordinary Sub Committee then the Sub Committee will have no power to do any more in respect of a member of a Parish Council by way of sanction than make a recommendation to the Parish Council. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Panels. Parish Councils would though be free to decide not to delegate that power. However, the most powerful sanction in most cases (and the only one available in many) will be that of a report to the Parish Council itself. The absence of a power to impose a sanction may therefore be more of a theoretical rather than a practical problem.

Appeals

5.11 There is no requirement to put in place any appeals mechanism. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

Recommendation 3

That the Monitoring Officer be instructed to prepare for approval "arrangements" as follows -

- a. That the Monitoring Officer be designated as the appropriate Officer to receive complaints of failure to comply with the Code of Conduct;*

- b. That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report to the Standards Committee on the discharge of this function;*
- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;*
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;*
- e. That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct.*

6 Independent Person(s)

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

“Independence”

- 6.1 The Independent Person must be appointed through a process of public advertisement, application and appointment by a vote of a majority of all members of the Council (not just of those present and voting).

A person is considered not to be “independent” if –

- 6.1.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the City Council or of any of the Parish Councils within its area;
- 6.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the City Council or of any of the Parish Councils within its area ;
or
- 6.1.3 he is a relative (as defined within the Act) or close friend (which is not defined) of a current elected or co-opted member or officer of the City Council or any Parish Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

6.2 The wording of the Act seems to be clear enough in excluding current independent members from acting as independent persons for the City of York.

Functions of the Independent Person

6.3 The Independent Person(s) –

- Must be consulted by the authority before it makes any decision in respect of an allegation which it has decided to investigate
- May be consulted by the authority in respect of a standards complaint at any other stage; and
- May be consulted by a member or co-opted member of the City Council or of a Parish Council against whom a complaint has been made.

This causes some problems, an Independent Person who has been consulted by the member against whom the complaint has been made, might as a result be regarded as prejudiced on the matter, if they were to be involved in the determination of that complaint.

How many Independent Persons?

6.4 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, provided that a couple of reserves are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

Recommendation 4

- a. That the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons*
- b. That a Sub Committee comprising the Chair and three other members of Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.*

7 The Register of Members' Interests

- 7.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). At present we do not know what Disclosable Pecuniary Interests will comprise. 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.
- 7.2 In addition to registering DPI's the Authority's Code of Conduct will contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 7.3 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 7.4 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.

- 7.5 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.
- 7.6 The Monitoring Officer is required to maintain the 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 City Council offices and on the City Council's website as well as the Parish Council's website if it has one.

Recommendation 5

- a. *That the Monitoring Officer ensure that all members are informed of their duty to register interests;*
- b. *That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements.*

8 Disclosure of Interests and Withdrawal from Meetings

- 8.1 If a Member is present at a meeting and has a DPI in any matter to be considered then the interest has to be disclosed but only if it is not already registered or, at least, if the Member has not sent off a notification to the Monitoring Officer. Having disclosed a DPI the Member has 28 days to update their register. A member with a DPI (whether required to be declared or not) is prevented from participating in any discussion of the matter or the vote. It is a matter for the Council to determine in its standing orders whether Members with an interest must leave the meeting room.
- 8.2 The Act does not define "discussion" and in the absence of any clear guidance to the contrary it may be wise to assume that this would prevent a Member with a DPI from making representations on an issue

as currently allowed for members with a prejudicial interest under the Code.

- 8.3 Similar provisions to those described in paragraph 8.1 apply to functions which may be discharged by an individual Member. In York this will apply to Cabinet Member decisions. There is a requirement that disclosable interests in these be registered and that the Member does nothing in respect of the function other than arrange for someone else to perform it.
- 8.4 Failure to comply with the requirements in respect of disclosure and participation becomes a criminal offence rather than leading to sanctions;
- 8.5 The Council's Code of Conduct must make "appropriate" provisions for the registration and disclosure of interests other than DPIs. Failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence. Standing Orders could require a Member to withdraw from the meeting room.

Recommendation 6

That Standards Committee recommend the introduction of Standing Orders requiring Members to withdraw from the meeting room during the consideration of any item of business in which he or she has a DPI unless a dispensation has been granted

9 Sensitive Interests

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a

meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

10 Dispensations

10.1 The provisions on dispensations are significantly altered by the Localism Act.

10.2 In future, a dispensation will be able to be granted in the following circumstances –

(a) That so many members of the decision-making body have DPLs in a matter that it would “impede the transaction of the business”.

(b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote on the matter;

(c) That the authority considers that the dispensation is in the interests of persons living in the authority's area;

(d) That, without a dispensation, no member of the Cabinet would be able to participate on this matter

(e) That the authority considers that it is otherwise appropriate to grant a dispensation.

10.3 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

10.4 The application for an exemption has to be to the “Proper Officer” of the Council but the Localism Act now gives discretion for this power to grant the exemption to be delegated to a Committee, a Sub-Committee, or to an Officer. Parish Councils will exercise this responsibility themselves unless they choose to delegate it.

10.5 So far as the City Council is concerned it is suggested that the grounds under paragraph 10.2(d) are quite objective and might appropriately be delegated to an Officer. Similarly, if the view is taken that for business to be impeded the meeting needs to be otherwise inquorate, the grounds for a dispensation under paragraph 10.2 (a) are also objective. The other grounds though are rather more subjective and it may well be more appropriate for applications to be determined by a Committee.

Recommendation Seven

1. *That the City Council be recommended to delegate to the Monitoring Officer the power to grant dispensations on grounds referred to in paragraphs 10.2 (a) and (d)*
2. *That the City Council be recommended to delegate to the Standards Committee the power to grant dispensations on all grounds*

11 Transitional Arrangements

Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct.
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

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Background papers

None