

## REPORT TO COUNCIL

19 June 2012

### Report of the Solicitor to the Council and Monitoring Officer

## THE LOCALISM ACT 2011 – Changes to the Standards Regime

### 1 PURPOSE

The Localism Act 2011 (the Act) 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 is 1 July 2012.

This report describes the changes and recommends the actions required for the Council to implement the new regime.

### 2 RECOMMENDATIONS

It is recommended that :-

a.

(i) Council establish a larger Audit and Governance Committee comprising seven elected members of the District Council, appointed proportionally; or

(ii) Council retain Standards Committee without Independent Members bringing membership of the Committee down to five elected members

b. the Terms of Reference of the Audit and Governance Committee be extended to encompass issues and complaints relating to Standards of Conduct of members

c. Council adopt a Code of Conduct to have effect from 1 July 2012.

(1) The Standards Committee has recommended that the draft Code should be as that suggested by the LGA as attached at Appendix A.

(2) THE AFORESAID Code of Conduct does not encompass Disclosable Pecuniary Interests nor the recommendations of the Governance Review Group, Such a Code is attached at Appendix B.

The minimum Statutory requirement requires a Code that

- i. is consistent with the principles of public life and
- ii. specifies the interests which are required to be registered in addition to the mandatory registration of by the Disclosable Pecuniary Interests (DPI's).

- d. Council adopt Arrangements for dealing with complaints regarding members of the Council as attached at Appendix C in terms of Section 28(6) of the Act, which is the proposal for all Staffordshire Councils to allow for uniformity and consistency in dealing with complaints across Staffordshire
- e. the Monitoring Officer appoint a Deputy Monitoring Officer from one of the members of Corporate Management Team
- f. the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and up to 2 Reserve Independent Persons
- g. a Committee comprising the Chair and two other members of Standards Committee/ Audit and Governance Committee be set up to deal with the appointment at (e) above and proceed to short-list and interview candidates, and to make a recommendation to Council for appointment.
- h. the Monitoring Officer, in consultation with the Chair of the Committee and the Leader, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the said Committee.
- i. the Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
- j. Council adopt a Standing Order which equates to the current Code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which e/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.
- k. Council delegate the power to grant dispensations –
  - i to the Monitoring Officer with an appeal to the said Committee, and
  - ii to the said Committee after consultation with the Independent Person.
- l. that the current Standards Committee and appointment of Independent members cease to have effect from 30 June 2012 and that any complaints not concluded at that date be referred to the Committee for consideration.

### 3 SUMMARY

Under the Localism Act the authority remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

Accordingly the District Council has to decide

- i) what arrangements to make to deal with issues of misconduct of its members and how it is to be composed;
- ii) what it will include in its Code of Conduct
- iii) how many Independent Persons are required
- iv) what “arrangements” it will adopt for dealing with conduct complaints and for taking action where a member is found to have failed to comply with the Code of Conduct
- v) the requirements for the Register of Members Interests
- vi) whether to adopt a Standing Order in respect of withdrawal from meetings for member’s interests
- vii) in what circumstances Standing Orders would exclude a member from attending meetings while the matter in which they have a Disclosable Pecuniary Interest is being discussed or voted upon
- viii) what arrangements would be appropriate for granting dispensations in relation to prejudicial interests of members.

#### **4 RESOURCE IMPLICATIONS**

The setting up of extended remit of the Committee, Code of Conduct, hearing processes and appointment of Independent Persons and changes to the Constitution will be carried out by the Monitoring Officer as part of her duties and have no additional resource implications for the Authority. The level of remuneration for the Independent Person(s) requires to be decided and will be an ongoing requirement, however it is not considered to be an onerous cost to the authority and should be contained within present budget figures.

#### **5 EQUALITY IMPLICATIONS**

This decision does not require an Equalities Impact Assessment. In approving the recommendations it is envisaged that the citizens of Tamworth will benefit from a robust, open and transparent Standards Regime.

#### **6 RISK IMPLICATIONS**

An effective Standards Regime will provide the mitigating action necessary to ensure that its statutory obligations under the Localism Act 2011 are met by the implementation date of 1 July 2012.

#### **7 BACKGROUND INFORMATION**

##### **7.1 Standards Committee**

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. The Standards Board has already been abolished from 1 April 2012 and arrangements for Standards are a meter for individual authorities to determine under the new provisions in the Localism Act. In essence, there will be no requirement for a Standards Committee. However, there will still be a need to deal with conduct issues and case-work, so that it is likely to remain convenient to have a Committee that can deal with such complaints. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

- 7.1.1 The composition of the Committee will be governed by proportionality.

- 7.1.2 The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons who must be consulted at various stages. The existing co-opted independent members cannot serve as Independent Persons for five years. A person is not “independent” if they are or have been within the last five years an elected , or co-opted member of any Committee or Sub-Committee of the Council, this precludes any of the current co-opted independent members of Standards Committee being appointed as an Independent Person The new Independent Persons may be invited to attend meetings of the Committee, but would not be members of that Committee;

## 7.2 The Code of Conduct

The current ten General Principles and Model Code of Conduct are repealed. However the Council will require its members to give an undertaking to comply with the Code of Conduct. In addition the Council will require 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

The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles.

So the Council’s new Code of Conduct has to deal with the following matters –

- General conduct rules, to give effect to the seven principles.
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires DPI’s to be registered and where not registered be declared at meetings. The Relevant Authorities (Disclosable Interests) Regulations 2012 (Appendix D) set out those pecuniary interests which must be registered.
- The Governance Review Group recommended that each member sign a copy of the Code indicating their willingness to be bound to it and that it encompass respect between members, staff and any other people members come into contact with in the course of their duties.

The Act does not give the Council any powers to impose sanctions, such as suspension or requirements for training or an apology, on members in relation to a breach of conduct. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this should include the following –

## The Committee

- Report its findings to Council for information;
- Recommend 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;
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the member;
- Remove the member from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or

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.

## Appeals

There is no requirement to put in place any appeals mechanism against such decisions. 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.

## 7.3 Independent Person(s)

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

### 7.3.1 "Independence"

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

### 7.3.2 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.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations.

## 7.4 The Register of Members' Interests.

The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (attached at Appendix D) define “Disclosable Pecuniary Interests” (DPIs).

In Summary they are

Employment, office, trade, profession or vocation  
Sponsorship  
Contracts  
Land  
Licences  
Corporate Tenancies  
Securities

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.

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.

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.

## 7.5 Disclosable Pecuniary Interests and withdrawal from meetings

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

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So –

7.5.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has an unregistered DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration. Where the DPI is disclosed it must be registered in the register of interests within 28 days unless notification has already been given.

7.5.2 If a member has a DPI in any matter, he/she must not –

Participate in any discussion of the matter at the meeting; or  
Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

- 7.5.3 Failure to observe these provisions will be criminal offences which on conviction will carry a maximum fine of £5,000. Prosecutions may only be instituted with the permission of the Director of Public Prosecutions and cases must be brought within specific time scales.
- 7.5.4 The requirement to withdraw from the meeting room shall be covered by Standing Order, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet meetings.

## Sensitive Interests

The Act effectively re-enacts the existing 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.

## Appendices

**Appendix A Proposed Code of Conduct by Standards Committee**

**Appendix B Proposed Code of Conduct incorporating Disclosable Pecuniary Interests and recommendations of the Governance Review Group**

**Appendix C Arrangements for dealing with Complaints**

**Appendix D The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012**

## REPORT AUTHOR

Jane M Hackett, Solicitor to the Council and Monitoring Officer Tel; 709258 if you would like further information or clarification prior to the meeting

## LIST OF BACKGROUND PAPERS

The Localism Act 2011 <http://www.legislation.gov.uk/ukpga/2011/20/contents>

The Localism Act 2011 Explanatory Notes

<http://www.legislation.gov.uk/ukpga/2011/20/notes/contents>

The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 <http://www.legislation.gov.uk/uksi/2012/1463/contents/made>

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