

Standards Committee	Agenda Item:
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Meeting Date	21 February 2012
Report Title	The Localism Act 2011 – the Amended Standards Regime
Portfolio Holder	The Leader
SMT Lead	Director of Corporate Services as Monitoring Officer
Head of Service	
Lead Officer	Monitoring Officer
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	<p>The arrangements required to ensure compliance with the Localism Act will result in changes to the Constitution. The Standards Committee is asked to make recommendations to the General Purposes Committee and Full Council regarding the arrangements and resulting changes to the Council’s Constitution, including any required Monitoring Officer Protocol and Access to Information Procedure Rules.</p> <p>Recommendation 1 –</p> <p>a. That subject to discussion with the Group Leaders, the Council establishes a Standards Committee appointed proportionally.</p> <p>b. That the Leader of the Council be requested to nominate to the Committee only one Member who is a Member of the Cabinet;</p> <p>c. 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;</p>
	<p>Recommendation 2 -</p> <p>a. That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –</p> <p>i. equate to Paragraphs 3 to 7 (refer to Appendix II for detail) of the current</p>

	<p>Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the Council or its Committees and Sub-Committees; and</p> <p>ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.</p> <p>b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Committee and the Leader, add to that draft Code provisions which he considers to be appropriate for the registration and disclosure of interests other than DPIs.</p>
	<p>Recommendation 3A – That the Monitoring Officer be instructed to prepare and submit to Council for approval “arrangements” as follows:</p> <p>a. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;</p> <p>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 regularly to Standards Committee on the discharge of this function;</p> <p>c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be</p>

	<p>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;</p> <p>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;</p> <p>e. That Council delegate to a Hearings Panel 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, such actions to include:</p> <ul style="list-style-type: none"> ○ Reporting its findings to Council <i>[or to the Parish Council]</i> for information; ○ Recommending to the Member's Group Leader 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 Cabinet, or removed from particular Portfolio responsibilities; ○ Instructing the Monitoring Officer to <i>[or recommend that the Parish Council]</i> arrange training for the Member; ○ Removing <i>[or recommend to the Parish Council that the Member be removed]</i> from all outside
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	<p>appointments to which he/she has been appointed or nominated by the authority <i>[or by the Parish Council]</i>;</p> <ul style="list-style-type: none"> ○ Withdrawing <i>[or recommend to the Parish Council that it withdraws]</i> facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or ○ Excluding <i>[or recommend that the Parish Council exclude]</i> 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. <p>Recommendation 3B – That a meeting be arranged between the Chair of Standards Committee and the Group Leaders for the Borough Council and representatives of Parish Councils to discuss how the new system can best operate.</p>
	<p>Recommendation 4 –</p> <ul style="list-style-type: none"> a. That the Monitoring Officer, in consultation with the Chair of Standards Committee and the Leader, and with the advice of the Head of HR, 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 Standards Committee b. That the Monitoring Officer advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons c. That a Committee comprising the Chair and two other Members of Standards Committee be set up to short-list and interview candidates,

	<p>and to make a recommendation to Council for appointment.</p>
	<p>Recommendation 5 –</p> <ul style="list-style-type: none"> a. That 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; b. That the Monitoring Officer ensure that all Members are informed of their duty to register interests; c. That the Monitoring Officer prepare and maintain new registers of Members’ interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and d. That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements.
	<p>Recommendation 6 – The Monitoring Officer be instructed to recommend to Council 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 he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.</p>
	<p>Recommendation 7 – In respect of single Member decisions, the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of conduct requirement that a Member must withdraw from</p>

	<p>the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.</p>
	<p>Recommendation 8 – That Council delegate the power to grant dispensations –</p> <p style="padding-left: 40px;">a. on Grounds set out in Paragraph 57.1 and 4 of this report to the Monitoring Officer with an appeal to Standards Committee, and</p> <p style="padding-left: 40px;">b. on Grounds in Paragraph 57. 2, 3 and 5 to the Standards Committee, after consultation with the Independent Person.</p>

Purpose of Report and Executive Summary

1. 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 proposed to be 1 April 2012; however, this has now been put back until 1 July 2012. It would be sensible to have arrangements in place from the Annual Meeting of Council in May 2012. Various discussions are on-going with Kent local authorities to identify any areas of common ground and the Local Government Association is considering whether to produce a template Code of Conduct. Any update will be given at the meeting.

2. I have previously circulated an initial briefing note on the changes and this is attached at Appendix I.

3. This report describes the changes and recommends the actions required for the Council to implement the new regime. In particular, it needs to consider arrangements for:

- Establishing a new style Standards Committee
- What should be included in a Code of Conduct
- What “arrangements” it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct
- The number of Independent Persons required
- Preparation of the Registers

- Standing Orders the Council should adopt for withdrawal from meetings for interests and excluding single Members from attending meetings while the matter in which they have a DPI is being discussed or voted upon?
- granting dispensations

4. The arrangements required to ensure compliance with the Localism Act will result in changes to the Constitution. The Standards Committee is asked to make recommendations to the General Purposes Committee and Full Council regarding the arrangements and resulting changes to the Council's Constitution, including any required Monitoring Officer Protocol and Access to Information Procedure Rules.

Background and proposals

5. This section set outs the key relevant information necessary to provide some context for the report. Proposals for consideration and recommendations are highlighted.

Duty to promote and maintain high standards of conduct

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

Standards Committee

7. The Localism Act 2011 (the Act) repeals Section 55 of the Local Government Act 2000, which provided for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so it remains sensible and practical to have 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:

- The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no Member voting against. The present restriction to only one Member of the Executive on the Standards Committee will cease to apply. If the Standards Committee was 12 Members, giving the Independent Group a definite seat, they would consequently lose a seat on either Scrutiny or Audit and the Labour Group would have to gift another of their seats to the Conservative Group to achieve overall balance. It is suggested that discussions take place with the Group Leaders as there is no way of keeping the current Committee arrangements whilst also giving the Independent Group a seat on Standards. It should be noted that any proposed Standards Committee will be chaired by an elected Member.
- The current co-opted independent Members will cease to hold office. The Act establishes a new category of Independent Persons (see below Paras. 27 -35). They who must be consulted at various stages. Existing co-opted independent Members cannot serve as Independent Persons for 5 years. The new

Independent Persons may be invited to attend meeting so the Standards Committee, but are unlikely to be co-opted onto the Committee. Following concerns that existing co-opted independent Members of Standards Committees could not be the new Independent Persons under s.28 of the Localism Act 2011, ACSeS sought advice from Clive Sheldon QC. He confirms that former independent Members are not permitted to serve as independent persons within a period of five years from their previous service.

- The Borough Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils. The current Parish Council representatives cease to hold office. The Borough Council can choose whether it want 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
 - 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). The latter is not recommended at this stage.

Issue 1 – The Council must decide to whether to set up a Standards Committee, and how it is to be composed.

Recommendation 1 –

- a. **That subject to discussion with the Group Leaders the Council establishes a Standards Committee appointed proportionally.**
- b. **That the Leader of the Council be requested to nominate to the Committee only one Member who is a Member of the Cabinet;**
- c. **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;**

The Code of Conduct

8. The current ten General Principles and Model Code of Conduct will be repealed. 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

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

10. 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 that it might be appropriate to include in the Code in respect of the totality of all interests.

11. Accordingly, it seems sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires 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.

12. 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.

13. So 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. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct (see Appendix II). The Council can amend its Code of Conduct subsequently if the need arises; and
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests 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.

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

Recommendation 2 -

- a. That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –**
 - i. equate to Paragraphs 3 to 7 (refer to Appendix II for detail) of the current Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the Council or its Committees and Sub-Committees; and**
 - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.**
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Committee and the Leader, add to that draft Code provisions which he considers to be appropriate for the registration and disclosure of interests other than DPs.**

Dealing with Misconduct Complaints

“Arrangements”

14. 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. Such complaints can only be dealt with in accordance with such “arrangements”.

15. 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.

16. The advantage is that the Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees. It enables the Council to establish its own process. This can include delegation of decisions on complaints. 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. Appendix III sets out a suggested procedure.

Decision whether to investigate a complaint

17. 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. 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. This would be subject to consultation with the Independent Person and 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.

18. 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 should be accountable for its discharge. For this purpose, it would be appropriate that he make a regular report to 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

19. 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 Referrals Sub-Committee and the Sub-Committee take the decision to take no further action.

20. 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. 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 provides a summary report of each such investigation to Standards Committee Members for information.

“Breach of Code” finding on investigation

21. 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.

22. 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.

23. 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. The Hearings 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.

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

24. The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members. 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 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 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;
- Recommending to the Leader of the Council that the Member be removed from the Cabinet, 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.

25. 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 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, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Parish Council. This course of action is not recommended at this stage of implementation of the new standards regime.

Appeals

26. 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.

Issue 3 – The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct.

Recommendation 3A – That the Monitoring Officer be instructed to prepare and submit to Council for approval “arrangements” as follows -

- a. **That the Monitoring Officer be appointed as the Proper 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 regularly to 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, such actions to include:**

- **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 Cabinet, 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.**

Recommendation 3B – That a meeting be arranged between the Chair of Standards Committee and the Group Leaders for the Borough Council and representatives of Parish Councils to discuss how the new system can best operate.

Independent Person(s)

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

"Independence"

28. 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 Borough Council (not just of those present and voting).

29. A person is considered not to be "independent" if:

- he is, or has been within the last 5 years, an elected or co-opted Member or an officer of the Borough Council or of any of the Parish Councils within its area;
- he is, or has been within the last 5 years, an elected or co-opted Member of any Committee or Sub-Committee of the Borough Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent Members of Standards Committee from being appointed as an Independent Person); or
- he is a relative or close friend of a current elected or co-opted Member or officer of the Borough Council or any Parish Council within its area, or of any elected or cop-opted Member of any Committee or Sub-Committee of such Council.

29. For this purpose, “relative” comprises –

- (a) the candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

Functions of the Independent Person

30. The functions of the Independent Person(s) are:

- They must be consulted by the authority 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 authority 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.

31. This 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.

How many Independent Persons?

32. 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 reserve candidates 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.

Remuneration

33. 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. It can therefore be determined without reference to the Independent Remuneration Panel.

34. In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal Member of the Committee or Panel (he/she could be co-opted as a non-voting Member but cannot chair as the Chair must exercise a second or casting vote).

35. 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. However, it would be appropriate to undertake a proper review of the function before setting any remuneration. It might be appropriate to use a daily allowance similar to that of the Local Arbitrator but this can be discussed further.

Issue 4 – How many Independent Persons are required?

Recommendation 4 –

- a. That the Monitoring Officer, in consultation with the Chair of Standards Committee and the Leader, and with the advice of the Head of HR, 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 Standards Committee**

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

The Register of Members' Interests

The Register of Members' interests

36. 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.

37. 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. 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.

38. 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.

39. 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 Parish 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

40. 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.

41. 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.

42. 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.

43. 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 Borough Council to recover any costs from Parish Councils.

Issue 5 – Preparation of the Registers

Recommendation 5 –

- a. That 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;**
- b. That the Monitoring Officer ensures that all Members are informed of their duty to register interests;**
- c. That the Monitoring Officer prepare and maintain new registers of Members’ interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and**
- d. That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements.**

Disclosure of Interests and Withdrawal from Meetings

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

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 a 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. Members will recollect that this situation arose in a local case where the councillor left the meeting before the item was discussed but was present at the beginning of the meeting. In summary if the matter is on the Agenda the interest should be declared when the Chair asks at the beginning of the meeting.
2. Where these conditions are met, the Member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest).

However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, Members of the public attending the meeting will in future need to read the register of Members’ interests, as registered interests will no longer be disclosed at the meeting.

3. Where the Member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.

4. If a Member has a DPI in any matter, he/she must not –

- Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
- Participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

45. Failure to comply with the requirements at bullet points 2, 3 or 4 becomes a criminal offence, rather than leading to sanctions.

46. The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs. Failure to comply with these requirements would be a breach of Code of Conduct not a criminal offence.

47. The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the Member.

Issue 6 – What Standing Order should the Council adopt in respect of withdrawal from meetings for interests?

Recommendation 6 – The Monitoring Officer be instructed to recommend to Council 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 he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

Disclosure and Withdrawal in respect of matters to be determined by a Single Member

48. Matters can be decided by a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers.

49. The Act provides that, when a Member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter –

- Unless the DPI is already entered in the register of Members' interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
- He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- Standing Orders can then provide for the exclusion of the Member from any meeting while any discussion or vote takes place on the matter.

Note that the Act here effectively removes the rights of a Member with a prejudicial interest to make representations as a Member of the public under Paragraph 12(2) of the current Code of Conduct

Issue 7 – In what circumstances should Standing Orders exclude single Members from attending meetings while the matter in which they have a DPI is being discussed or voted upon?

Recommendation 7 – In respect of single Member decisions, the Monitoring Officer be instructed to recommend to Council 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 he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

Sensitive Interests

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

51. 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".

52. 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.

Dispensations

53. The provisions on dispensations are significantly changed by the Localism Act.

54. At present, a Member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds:

- That at least half of the Members of a decision-making body have prejudicial interests, and
- That so many Members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.

55. In future, a dispensation will be able to be granted in the following circumstances:

1. That so many Members of the decision-making body have DPis in a matter that it would "impede the transaction of the business". In practice this means 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 the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
3. That the authority 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 would be able to participate on this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
5. That the authority considers that it is otherwise appropriate to grant a dispensation.

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

57. The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 1 and 4 are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”. Grounds 2, 3 and 5 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

Issue 8 – What arrangements would be appropriate for granting dispensations?

Recommendation 8 – That Council delegate the power to grant dispensations –

- a. on Grounds set out in Paragraph 55.1 and 4 of this report to the Monitoring Officer with an appeal to Standards Committee, and**
- b. on Grounds in Paragraph 55. 2,3 and 5 to the Standards Committee, after consultation with the Independent Person.**

Transitional Arrangements

58. As outlined in the standards provisions of the Localism Act 2011, the regulatory role of Standards for England ceased on 31 January 2012. This means that Standards for England no longer has powers to accept new referrals from local standards committees or conduct investigations into complaints against Members.

59. It also means that their role in providing guidance on the current standards framework will cease from 31 January

60. DCLG have confirmed that the other standards elements of the Localism Act 2011, such as the removal of powers from existing local standards committees, requirement to adopt a local Code and to appoint an independent Member, will come into force on 1 July 2011.

Alternative Options

61. Where there are alternative options available these have been explained in the background and proposals Section above, it must be remembered that these are statutory provisions.

Consultation Undertaken or Proposed

62. The Standards Committee is being consulted to formulate recommendations for General Purposes Committee and Council.

Implications

Issue	Implications
Corporate Plan	Currently this relates to the high performing organisation corporate plan priority.
Financial, Resource and Property	Revising the constitution will be accommodated within existing budgets. Advertising costs will be incurred for the Independent Person recruitment process. Resources required for investigations will depend on the number of case to be dealt with. Resources for registration of interests will depend on the variety of local codes adopted by the Parish Councils
Legal and Statutory	The arrangements outlined in the report are required to satisfy the provisions of the Localism Act 2011.
Crime and Disorder	None identified at this stage
Risk Management and Health and Safety	Risks of not complying with the legal requirements will be mitigated by the actions suggested in the recommendations to the report.
Equality and Diversity	No adverse equality or diversity implications, procedures apply equally.
Sustainability	None identified at this stage

Appendices

63. The following documents are to be published with this report and form part of the report

- Appendix I: Ethical standards and the Localism Act 2011 –Initial Briefing for Members of the Standards Committee (based on Legal Update Prepared by Weightmans LLP Solicitors)
- Appendix II Extract from the Code of Conduct –guide for Members May 2007 issued by the Standards Board for England–general obligations under the Code of Conduct
- Appendix III - Model Arrangements for dealing with standards allegations under the Localism Act 2011

Background Papers

64. Localism Act 2011

Ethical standards and the Localism Act 2011 –Initial Briefing for Members of the Standards Committee (based on Legal Update Prepared by Weightmans LLP Solicitors)

Summary:

1 The Localism Act has received the Royal Assent. This briefing deals with the conduct regime.

2. Headlines are:

- The “Standards Board regime” and all the current legislation will be repealed.
- There will be a new general duty to promote and maintain high standards of conduct by Members and voting co-opted Members. There is no mechanism to enforce this within the Act.
- Each “relevant authority” must adopt a code which deals with the conduct expected of Members and voting co-opted Members when acting in that capacity. It must be consistent with a new set of general principles and the rest of the new legislation, but there will be no national model. It will need to include provisions about Members’ interests but most of the content is for the authority to decide.
- Regulations will define “disclosable pecuniary interests” of Members and spouses/partners. The monitoring officer will keep and publish a register of these as before, but the details of the duty to notify are different. Members will have to make an oral disclosure at meetings if their interest has not been registered. As before, sensitive information can be kept private if there is a risk of violence or intimidation.
- A Member with an interest of this kind in a matter must not participate in any discussion of, or vote on, the matter at the meeting. Standing orders may require the Member to leave the meeting. There is a similar rule for individual Member decisions.
- It is a criminal offence to fail to notify the monitoring officer of an interest of this kind, or to participate in a meeting or take a decision, without reasonable excuse. It is also an offence knowingly or recklessly to provide false or misleading information. Only the DPP can authorise prosecutions, and there are time limits.
- The authority can, however, grant dispensations permitting participation. The grounds for so doing are much wider than before.
- Authorities must have in place “arrangements” under which allegations of breach of the code can be investigated and decisions on allegations can be taken, with or without an investigation or a hearing. This could, but need not, include some kind of standards committee. However, there are no sanctions apart from naming and shaming and possibly withdrawal of facilities in some cases.
- Authorities must appoint an “independent person” (IP). They must consult the IP after an investigation, and may consult the IP on other complaints. A Member about whom an allegation has been made can also consult the IP. It is hard to see how this will work. The IP cannot be, or have been in the last five years, a

Member, co-opted Member or officer of the authority. This probably rules out their current Standards Committee Members.

- This all applies to parish councils, with modifications, except that their principal authorities will make and operate the “arrangements” for them and they will use the principal authority’s IP.
- The main gaps are the absence of any national coordination or consistency, and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality, underlined by the omission of “respect” and “stewardship” from the new list of principles. An authority’s code may cover these issues, but this is optional.
- The Government hopes the legislation will take effect in April 2012 but the Regulations about disclosable pecuniary interests have not yet been published. There will be transitional arrangements for existing casework.
- There is a great deal of choice for authorities within this framework, and we will need to work quickly to develop the code, the “arrangements” and standing orders, to delegate the power to grant dispensations and appoint one or more IPs.

Introduction

3 The Localism Act received Royal Assent on 15 November 2011. Chapter 7 is simply called “Standards” but it deals with how the conduct of local authority Members and co-opted Members is to be regulated. It gives effect to the Coalition Government’s promises to “abolish the Standards Board regime”, whilst retaining a “safety net”. A long debate in the House of Lords produced a promise to rethink the size and shape of the net, and some last minute amendments were hurriedly zipped into place. This is the outcome.

4 Or rather, this is the outcome for “relevant authorities”: the usual list, but excluding local authorities in Wales, who keep their own version of the old legislation. The new ethical standards provisions apply to local authorities, police authorities in England or Wales and the Metropolitan Police Authority (while they still exist), the London Fire and Emergency Planning Authority, fire and rescue authorities in England, and National Park authorities, amongst others.

5 First, the Act repeals the relevant sections of the Local Government Act 2000, and the subordinate legislation, so that we start with a clean sheet of paper. Out go Standards for England, the national regulator, the national code of conduct and the special standards committees that local authorities had to appoint. As the 2000 Act abolished much of the previous regime, the sheet of paper has never been cleaner. Then the Act starts to sketch in the safety net.

General duty

6 The Act places a general obligation on relevant authorities to promote and maintain high standards of conduct by Members and voting co-opted Members of the authority, including elected mayors.

Code of Conduct

7 In discharging this obligation, authorities must adopt a code which deals with the conduct expected of Members and co-opted Members of the authority when acting in that capacity. This is a decision for full council or a full meeting of the authority.

8 This is narrower than the old system, which could in some circumstances catch the behaviour of Members acting in some other capacity – for example in their private lives – if there was sufficient connection between the misbehaviour and their office as a councillor. The exact scope of “acting in that capacity” remains to be determined. The tricky areas are Members who use authority facilities for some disreputable private purpose, such as accessing indecent images, Members who release confidential information to their friends, and Members who use their status as a councillor to obtain an advantage in their private lives.

9 The limitation to voting Members means that the code will not apply to non-voting Members of Scrutiny Committees and the like. An authority could ask them to agree to abide by the code in any event, and refuse to appoint them, or remove them, if they do not, but this would be a non-statutory process and will need careful thought.

10 The Code adopted by the authority must be consistent with the new statutory principles of selflessness, integrity and objectivity, accountability, openness, honesty and leadership. This replaces the old “general principles”, and there are some subtle differences. Out go “personal judgement”, “duty to uphold the law”, “stewardship” and, significantly, “respect for others”. As Groucho Marx said “Those are my principles, and if you don’t like them... well, I have others.”

11 The Code must also include provisions which the authority considers appropriate in respect of the registration of interests and the disclosure of “pecuniary interests”, and in respect of interests other than pecuniary interests. The phrase “pecuniary interests” harks back to the pre 2000 legislation, and to the old case law about what on earth it might mean, although as is to be expected there is a slight difference between the old and new wording. The general idea is that you have a pecuniary interest if you stand to gain or lose in some financial or material way.

12 The duty to ensure consistency with the new list of principles, and to make provision for the registration and disclosure of interests, does not mean that the code cannot cover other issues. This is a matter of choice.

13. Sections 29 to 34 of the Act make specific provision as to “disclosable pecuniary interests”, and the register of interests, and Codes must comply with those provisions. It is probably necessary to make some provision for other interests, such as Membership of a pressure group, but the requirement is to make “such provision as the authority considers appropriate” and this could be seen as an opportunity to make no provision at all. The authority may either revise the existing code or adopt a new code. All authorities will need to make changes to their existing codes to reflect the new disclosable pecuniary interests and to deal with the registration of interests provisions, which will be subject to further Regulations. The authority must publicise the adoption, revision or

replacement of the code in such a way that will bring it to the attention of persons who live in the area.

Register of interests

14 Section 29 provides that the monitoring officer must establish and maintain a register of Members' interests, and it is for the authority to determine what is to be entered in that register. No entries should be retained on the register if the interest no longer exists or the person concerned is no longer a Member. The authority's monitoring officer must ensure that the register is available for public inspection and on the Council's website.

15 Members are obliged within 28 days of being appointed as a Member or voting co-opted Member to notify the monitoring officer of a "disclosable pecuniary interest" held at the time of notification. Regulations will determine what is to count as a disclosable pecuniary interest. It will include the interests of Members themselves and (if the Member is aware of the interest) those of their spouse, civil partner, or any person living with them as their spouse or civil partner. This is narrower than the current code. The monitoring officer must then ensure that it appears in the register. There is no duty, however, to keep these particulars up to date. New interests arising on the 29th day or thereafter, until the next election, need not be notified unless the Member needs to disclose the interest under the following rules.

16 As before, if the Member's interest is such that he or she, and the monitoring officer, consider that there is a risk of the Member or some connected person being subject to violence or intimidation, then neither the entry in the register or the disclosure at the meeting need specify the nature of the interest.

Disclosing interests at meetings

17 If a Member has a disclosable pecuniary interest in any matter considered at a meeting at which that Member is present, the interest is not entered in the authority's register, and the Member is aware of the interest, the Member must disclose the interest to the meeting. It is not clear whether the Member needs to explain the nature of the interest, but this is probable. This requirement applies to executive or cabinet meetings, and executive committees and sub committees, but not explicitly to other informal meetings. The code could provide for wider application.

Participation

18 If a Member discloses an interest, he or she must not participate in any discussion of, or vote on, the matter at the meeting, subject to any dispensations which may apply. There is no statutory requirement for the Member to leave the room, but the authority may make standing orders that have this effect. This is likely to be necessary because the Ombudsman and the courts have been unhappy about cases where a Member with an interest has orchestrated debate from the public gallery, but old issues about Members' speaking rights as a Member of the public may make it sensible to copy

forward the provisions of the current model code which allow them limited speaking rights in their personal capacity.

19 The requirement also applies to any decisions taken by a single executive Member or a ward Member exercising delegated powers in his or her ward. In such cases, the Member must not take any steps, or further steps, in relation to the matter (apart from making arrangements for someone else to deal with it).

20 If the Member discloses an interest, he or she must notify the monitoring officer of the interest, so that it can be added to the register.

Offences

21 Section 34 provides that a person commits an offence if, without reasonable excuse, he or she:

- fails to notify the monitoring officer of a disclosable pecuniary interest within the time period;
- participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest; or
- takes any steps or further steps in relation to the matter in which he or she has a disclosable pecuniary interest, where he or she would otherwise take the decision personally.

22 An offence is also committed if the information provided to the monitoring officer is false or misleading, and the Member knows it is false or misleading, or is reckless as to whether the information is true and not misleading.

23 Prosecution must be by or on behalf of the DPP. A Member guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). A court may also disqualify the Member from being or becoming a Member for a maximum of 5 years. Proceedings must be brought within 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge. However, proceedings cannot be brought more than three years after the commission of the offence, or, for a continuous contravention, after the last date on which the offence was committed.

24 Although the authority has to consider whether it is appropriate for the code to contain provisions about the registration of other interests (that is to say, interests that are not "disclosable pecuniary interests"), and standing orders about leaving the room, there is no specific statutory obligation to notify the monitoring officer of those interests and no criminal offence connected with these requirements.

Dispensations

25 The authority may grant a dispensation relieving the Member from either not participating in the discussion or voting or both. He or she must make a written request

to the “proper officer”. The criteria are wider than before. A dispensation may be granted only if, having had regard to all the relevant circumstances, the authority considers that:

- without the dispensation, the number of persons prohibited by section from participating in this particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- without the dispensation, the representation of different political groups on the body transacting this particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- granting the dispensation is in the interests of persons living in the authority’s area;
- in the case of authorities operating executive arrangements, without the dispensation each Member of the authority’s executive would be prohibited from participating; or
- it is otherwise appropriate to grant a dispensation.

Arrangements for allegations and investigations

26 So far, then, relevant authorities are subject to a general duty to promote and maintain high standards of conduct, so they cannot ignore the entire issue. They have to adopt a code of conduct. It must be consistent with the new list of general principles. It will have to be consistent with the requirements for registering and disclosing certain pecuniary interests, in accordance with Regulations that have not yet appeared, and for non-participation in meetings or single-Member decision making if you have such an interest, and failure to comply with those provisions may be an offence. It could contain similar provisions relating to other personal interests. It could also contain other requirements. But what happens if someone thinks that a Member has breached the code?

27 The Act provides that local authorities must have in place “arrangements” under which allegations of breach can be investigated and decisions on allegations can be made. Those provisions must include the appointment of at least one independent person whose views must be sought and taken into account before the authority makes a decision on an allegation it has decided to investigate, and whose views may be sought on other allegations. The independent person’s views may also be sought by a Member or co-opted Member whose behaviour is the subject of an allegation.

28 The independent person cannot be a Member, co-opted Member or officer of the authority, a Member, or a relative or close friend of any of those people, nor can the independent person have been a Member, co-opted Member or officer of the authority at any time in the last five years.

29 The functions of the Independent Person are very curious:

- They must be consulted before the authority takes a decision to investigation any allegation. So it would appear reasonable to delegate this decision to the Monitoring Officer after consulting the Independent Person;

- They may be consulted by a Member of the authority against whom an allegation has been made. But, if they were consulted before the Monitoring Officer consulted them on a decision whether to investigate, it is hard to see how they could remain impartial. If consulted whilst a matter was being investigated, there would be little that they could suggest other than awaiting the outcome of the investigation. And if consulted by the Member once the investigation had been completed, that would make it hard for them to play any impartial or moderating role on any decision as to whether the authority should take any action on the breach. As co-opted Members, the Independent Person cannot exercise any decision-making functions.
- They may be consulted by a parish councillor against whom an allegation has been made. But in this instance the Independent Person would appear to be even less able to make any sensible contribution; and
- They may be consulted by the principal authority in circumstances where the authority is not taking a decision whether to investigate the allegation. Logic would suggest that the Independent Person might be able to make a useful contribution as a moderator sitting alongside any Hearing Panel, but that would not be practicable if their impartiality had been prejudiced by previously being consulted by the Member concerned.

30 The Act provides for the appointment of the independent person, following public advertisement and a vote at full Council, and permits the payment of allowances and expenses.

31 If a relevant authority finds that a Member or co-opted Member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation) it may have regard to the failure in deciding whether to take “action” in relation to the Member or co-opted Member, and what action to take. What action? There are no statutory sanctions at all. Ministers have said that censure – naming and shaming – would be a sufficient sanction. Case law indicates that it would be possible for the authority to withdraw access to its facilities, if this is a relevant and proportionate response to the breach. The authority will need a clear understanding of the options.

32 The authority itself will not be able to remove Members from positions of responsibility, though. The leader or elected mayor chooses the cabinet, and under section 16 of the Local Government and Housing Act 1989 the Membership of nonexecutive committees is determined by the political groups.

Constitutional issues

33 The code has to be adopted by full Council. All these functions are non-executive, and cannot be discharged by the cabinet. That means that either everything goes to full Council, or the function has to be delegated to a committee and/or to officers. The committee can do other things, apart from scrutiny, and committees dealing with standards, audit and governance are likely to be considered.

34 A committee will be constituted under sections 101 and 102 of the Local Government Act 1972. It will have to be politically balanced. It can co-opt other Members but they cannot vote, unless this is to be an “advisory committee” with no decision-making powers. The co-opted Members cannot chair the committee, because they could not exercise a casting vote. Existing independent Members and independent chairs could be reappointed in this way, but the selection paraphernalia will disappear. This is one of the gaps that many observers have commented on as it is difficult to see how a process could work at a hearing involving an independent Member who have no vote at the end.

35 The new “independent person” cannot have been a Member or co-opted Member in the last five years, so (unless there is some flexibility around the statutory definitions which is not immediately apparent) an independent Standards Committee chair cannot perform this role. It might be possible to consider swapping independent Members across neighbouring authorities although this will need further thought and discussion.

36 The “arrangements” will be left to the authority, but the same basic set of decisions and processes will have to be covered one way or another as under the present system:

- Is this a valid complaint?
- Does it relate to other authorities?
- Should it be referred to the police?
- Should it be investigated?
- and who will conduct the investigation?
- Should some other steps be taken, such as attempting reconciliation?
- After an investigation, should there be a hearing?
- Will a written exchange be sufficient?
- Who will decide if action should be taken, and what the action should be?
- If there is a hearing, the basic principles of natural justice will have to be observed.

37 It will be very difficult to design a system which covers all the ground without replicating the old system, especially as Members – and the courts – will be familiar with the old processes and all the checks and balances, but there will be a clear expectation that this will happen.

38 Note, though, that the investigator will have no power to require people to attend interviews, or to access documents.

39 How does the independent person fit in? He or she may be consulted on any complaint and must be consulted if there is an investigation. Does the monitoring officer consult the independent person routinely on all complaints, and, if so, will it be safe for the independent person to be consulted again after the investigation. What happens if the independent person, the monitoring officer and the committee disagree? And how does this fit with the ability of the Member against whom the complaint has been made to consult the independent person? The scenario could arise where a councillor, who learns that a complaint has been made about him, will immediately contact the

independent person, give her a skewed account of events and a rag bag of information, contrive a record of what he thinks he has been told and sit back and wait for the mess that this creates to be unravelled.

40 There is nothing to stop an authority delegating all or most of this to an officer, perhaps the chief executive or the monitoring officer, with only the final decision about “taking action” reserved to Members. This is what happened in practice before standards committees were invented. But the expectation of due process, and the likelihood of councillor versus-councillor complaints, will not go away, so the pressure on that officer would be considerable. It is difficult to predict whether the absence of any real sanction will increase the number of complaints by Members against each other: some might see this as an opportunity for name calling without the risk of serious consequences.

41 The same issues about the balance of transparency, privacy and the ability to deal with difficult complaints effectively will arise, and the arrangements will have to be clear about what will be public and what will be private, who will be told what, and when they will be told. The committee will meet in public unless a resolution is passed on the basis that one or more of the old exemption criteria apply (such as “information relating to any individual”) and that the balance of the public interest favours secrecy. The special exemption categories that related to Standards Committee proceedings will disappear. As the criterion relates to the disclosure of “information”, it is hard to see how the committee could retire to deliberate its decision.

42 It is tempting to think that none of this is important, because complaints about pecuniary interests will be passed to the police, and the rest of the process will be about less serious issues, but it will not work like that in practice. The code will have to cover the pecuniary interest issues, and there will be complaints about them, as well as complaints of more than one type of breach. The police may not be interested given their priorities and pressure on resources. They may take a long time to decide if they want to investigate. They may launch a protracted investigation and express the view that no internal process should be followed. This will be endlessly complicated, but in the end these serious complaints are likely to have to find their way through the “arrangements”.

43 Authorities will also have to delegate the power to grant dispensations. It would make sense to delegate this to the committee but to give the monitoring officer power to grant dispensations on the less subjective grounds so that this decision can be made quickly, if the issue arises, as it often does, shortly before the meeting to which it relates.

Parish Councils

44 The duty to “police” the conduct of parish councillors has placed a substantial burden on many local authorities and their monitoring officers. Earlier versions of the Bill ignored parish councils, but there was an expectation from the Parliamentary debates that parish councils would have a limited self-policing duty. Surprisingly, the Act retains the old relationship.

45 Parish councils are “relevant authorities”, so the provisions outlined above apply to them, but with some changes:

- They may adopt their own code of conduct, or they can adopt the Code that applies to Members of their principal authority.
- The principal authority’s monitoring officer keeps the register of interests. The authority must help the parish council to publicise its code on its website, if it has one, as well as publicising it in the same way as its own code,
- They need not make arrangements for the investigation of, or decisions on, allegations of breaches of the code.
- Their principal authority has to make these arrangements for all its parish councils.
- The principal authority’s independent person may be consulted by a Member or co-opted Member of a parish council against whom an allegation has been made.
- Although the principal authority must have arrangements in place for taking “decisions” on allegations against parish councillors, it appears that any consequential “action” can only be taken by the parish council.

46 This means, though, that the rules about disclosing interests and participation apply to parish councillors in the same way as they apply to other relevant authorities.

47 It also means that the power to grant a dispensation can be exercised by the parish council. This could be a regular occurrence, as the criteria are very broad. It is not clear whether parish councils will be able to grant their Members blanket dispensations, or whether the decision has to be issue-based. The latter is more likely.

Thoughts

48 In many ways this turns the clock back to 1999. The general duty and the new principles are platitudes which authorities would always have acknowledged. The pecuniary interest provisions, and the offences, are not too different from sections 94 to 98 of the Local Government Act 1972. The option to include other provisions in the code is comparable to the old advisory National Code of Local Government Practice, which was embedded in a Government circular. The “arrangements” for allegations and investigations are likely to resemble the virtually toothless voluntary standards committees which many authorities put in place after the Nolan Committee Report but before the 2000 Act, but they could just involve an enhanced complaints procedure. As with the 1972 Act provisions, the police will only be interested if there is clear evidence of what might be called corruption. The Government’s initial promise that the Ombudsman would be given enhanced powers to police the Code have been shelved, presumably because it was linked to the concept of mandatory reports, but before 2000, and even under the 2000 Act regime, the Ombudsman could, and did, investigate maladministration complaints involving Member misconduct.

49 Even then, the new safety net is looser than the old one. Surcharge for wilful misconduct was abolished in 2000 and is not being revived.

50 On the other hand, the relationship between parish and principal councils is a creature of the 2000 Act, and has been kept. Monitoring officers will continue to deal with dozens of parish councils. Swale's experience has shown that the majority of complaints have come from Parish councils and often a very small number with numerous complaints. The role of the "independent person", thrown into the mix at the end of the Parliamentary proceedings for largely presentational reasons, will take some working out. At first glance, it looks problematic.

51 The real gaps are the absence of any national coordination or consistency and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality. The former may be filled by ACSeS (The Association of Solicitors and Secretaries in local government) guidance, but there will be so many choices for authorities that this will be difficult to frame. The latter can be covered in the optional part of the new code, but many authorities will prefer a minimalist approach. The Government has signalled its position by dumping "respect" and "stewardship" from the new list of principles. Even with an expanded code, the lack of genuine sanctions means that nothing much can be done about serial disrespect or bullying, especially if the Member in question chooses to fight his or her corner in the local press (which usually compounds the breach). Members will no longer be obliged to undertake to abide by the code, so their declaration of acceptance of office will just say "I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability."

Next steps

52 The existing system will continue until this part of the Act comes into force. There will be transitional legislation, but it is not in the Act. A CLG statement in December 2010 said that all complaints and cases in the system when the law changes will be taken to their conclusion. Any Standards for England investigations will transfer to the local authority. Tribunals and Standards Committees will complete the cases that are referred to them, but there will be no right of appeal from Standards Committee decisions, and Standards Committees will have no power to disqualify, limiting their sanctions to censure and requiring training.

53 The Government's stated intention is to bring this into force by April 2012, so the new system can be put in place at Annual Council. As we have not yet seen draft regulations, this is ambitious. There is a great deal to do and authorities will have many difficult choices.

54 These are the key issues:

- What kind of code does the authority want? An ultra-minimalist code would just cover disclosable pecuniary interests (mostly a rehash of the primary legislation) accompanied by a determination that it is not appropriate to cover other interests or other matters. At the other end of the spectrum, many authorities will adopt a code that is very similar to the existing code, or the ACSeS model, and of course there is a lot of territory in between. This will involve a debate with Members and political groups about both the fundamental principles and the detailed provisions.

- Individual Members' likes and dislikes will figure prominently. It will not be possible to work on any of the details until the Regulations have been published.
- Authorities cannot extend the code to cover activity other than in the Member's capacity as a Member, but they will need to think about the gap between the statutory rules for formal meetings and all the other things that they do. They will also have to think about non-voting co-opted Members.
 - If there are parishes, what will their position be? They will need to decide whether to adopt the principal authority's code or one of their own. Does the principal authority want to consult them on its code? They will need information and, in due course, training.
 - Do existing independent Members of Standards Committees have an advisory role in addressing these issues? They will have devoted considerable time and energy to their role in the past, and there will need to be a dialogue with them about moving forwards.
 - What process will the authority follow to develop the code and the other arrangements?
 - Once the Regulations and the code are in place, monitoring officers will have to recast their system for recording Members' interests, including the system for parish councils.
 - New standing orders will be needed covering the process for disclosing and recording interests. They will need to deal with whether and when Members can remain in the room.
 - The authority will have to decide what kind of Member-level body is to discharge these functions. Broadly speaking, there is the general function of promoting high standards of conduct, which implies information, publicity and training, and there are the "arrangements" for dealing with complaints and investigations. If there is to be a committee, will it do other things? Will it appoint sub-committees for specific tasks like hearings? Will it co-opt non-voting Members, and, if so, for what purposes?
 - The power to grant dispensations will have to be delegated to a Member-level body and/or an officer, and a process put in place.
 - The arrangements for dealing with complaints, investigations and decisions to take action will have to be drawn up, discussed with Members and formally agreed. This will not be easy.
 - The monitoring officer will have to put arrangements in place with the police for referring complaints which allege or disclose criminal offences. At the very least they will need a contact point, but it would be sensible to think about what happens next.
 - One or more independent persons will have to be selected, following advertisement, and appointed. Protocols will need to be agreed, dovetailed with the "arrangements".
 - Ideally, authorities and monitoring officers should consult their neighbours, and other authorities to which they nominate Members, and counties should talk to Boroughs. It will be extremely confusing if they all have slightly different codes and procedures.

NOTE:

This update does not attempt to provide a full analysis of those matters with which it deals and is provided for general information purposes only and is not intended to constitute legal advice and should not be treated as a substitute for legal advice.

Extract from the Code of Conduct –guide for Members May 2007 issued by the Standards Board for England–general obligations under the Code of Conduct

Treating others with respect **See Paragraph 3(1)**

You must treat others with respect.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents.

Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers.

Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst it is acknowledged that some Members of the public can make unreasonable demands on Members, Members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

Complying with equality laws **See Paragraph 3(2)(a)**

You must not do anything which may cause your authority to breach any equality laws.

Equality laws prohibit discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age. The provisions of these laws are complex. In summary, there are four main forms of discrimination:

- Direct discrimination: treating people differently because of their sex, race, disability, religion or belief, sexual orientation or age.

- Indirect discrimination: treatment which does not appear to differentiate between people because of their sex, race, disability, religion or belief, sexual orientation or age, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of sex, race, disability, religion or belief, sexual orientation or age, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. They also impose specific positive duties on certain authorities.

Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct.

Bullying and intimidation See Paragraphs 3(2)(b) and 3(2)(c)

You must not bully any person including other councillors, council officers or Members of the public.

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence.

Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with the legitimate challenges which a Member can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

It is important that you raise issues about poor performance in the correct way and proper forum. However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code of Conduct.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Compromising the impartiality of officers of the authority See Paragraph 3(2)(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

You should not approach or pressure anyone who works for, or on behalf of, the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Disclosing confidential information See Paragraph 4(a)

You must not disclose confidential information, or information which you believe to be of a confidential nature, except in any of the following circumstances:

- **You have the consent of the person authorised to give it.**

- **You are required by law to do so.**
- **The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.**
- **The disclosure is in the public interest.**

This is only justified in limited circumstances, when all of the following four requirements are met:

1. the disclosure must be reasonable
2. the disclosure must be in the public interest
3. the disclosure must be made in good faith
4. the disclosure must be made in compliance with any reasonable requirements of your authority

In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.
- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure.

This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Preventing access to information See Paragraph 4(b)

You must not prevent anyone getting information that they are entitled to by law.

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the *Freedom of Information Act 2000* or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access.

To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting www.ico.gov.uk or by calling 0845 630 6060.

Disrepute **See Paragraph 5**

You must not bring your office or authority into disrepute while acting in your official capacity, or at any time through criminal activity that leads to a criminal conviction.²

As a Member, your actions and behaviour are subject to greater scrutiny than that of ordinary Members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your office or your authority.

² Transitional Note: Until such time as there is Parliamentary approval for amendments to section 52 of the *Local Government Act 2000* which reinstates the situation prior to Collins J's decision in *Livingstone v Adjudication Panel for England 2006*, the Code of Conduct does not apply to conduct outside of the performance of your functions as a Member. Only if you have engaged in an activity which has a link with the functions of your office will any conduct in your private capacity be covered by the Code of Conduct. If the legislative amendments are passed, the Code of Conduct will also apply to criminal activity which has led to a conviction.

Dishonest and deceitful behaviour in your role as a Member may bring your authority into disrepute, as may conduct in your private life which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

Using your position improperly **See Paragraph 6(a)**

You must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a Member.

In addition to paragraph 6(a), paragraph 12 is also relevant to the proper use of your position. Paragraph 12 supports your role as a community advocate, representing and speaking for the concerns of your community, even where you have a prejudicial interest. This right applies to you at meetings where you have a statutory right to speak or you are provided with the same opportunity to speak as ordinary Members of the public would be allowed. If your authority does not allow Members of the public to attend the relevant meeting for the purpose of speaking to it, paragraph 12 will not apply to you unless you have a statutory right to speak on the matter.

You must leave the room or chamber immediately after you have made the representations, given your evidence, or answered questions, and make no further attempt to influence the decision. If the meeting decides that you must stop speaking to the meeting, even if you have more to say, you must stop and leave the room.

If you fail to comply with the meeting's direction or paragraph 12 of the Code of Conduct, you may be found to have improperly influenced the decision.

The authority's resources **See Paragraph 6(b)(i)**

You must only use or authorise the use of the resources of the authority in accordance with its requirements.

Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for. You must be familiar with the rules applying to the use of these resources made by your authority.

Failure to comply with your authority's rules is likely to amount to a breach of the Code of Conduct. If you authorise someone (for example a Member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

Using resources for proper purposes only **See Paragraphs 6(b)(ii) and 6(c)**

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the *Local Government Act 1986*.

You should never use council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct.

Considering advice provided to you and giving reasons **See Paragraph 7**

Please note: paragraph 7 is not mandatory for parish councils. However, your parish may choose to include an obligation to take account of your clerk's advice in the Code your authority adopts.

You must have regard to advice from your monitoring officer or chief finance officer where they give it under their statutory duties.

If you seek advice, or advice is offered to you, for example, on whether or not you should register a personal interest, you should have regard to this advice before you make your mind up.

Failure to do so may be a breach of the Code of Conduct. You must give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where Members disagree with officer recommendations in making a decision, Members will need to take particular care in giving clear reasons for the decision.

Model Arrangements for dealing with standards allegations under the Localism Act 2011

Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this authority *[or of a parish council within its area]* has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 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 of a parish council within the authority’s area]*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

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 as been made.

The Code of Conduct

The Council has adopted a Code of Conduct for Members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Civic Offices.

[Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.]

Making a complaint

If you wish to make a complaint, please write or email to –

“The Monitoring Officer
Swale Borough Council
Swale House
East Street
Sittingbiurne
Kent
ME10 3HT

Or –

monitoringofficer@swale.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from Reception at the Civic Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the Member against whom your complaint is directed. *[Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.]*

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned [*and to the Parish Council, where your complaint relates to a Parish Councillor*], notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [*and the Parish Council*] for information, but will take no further action. However, if you tell the Monitoring Officer that any

suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter..

What action can the Hearings Panel take where a Member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- a. Publish its findings in respect of the Member's conduct;
- b. Report its findings to Council [*or to the Parish Council*] for information;
- c. 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;

- d. Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Instruct the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Member;
- f. Remove *[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]*;
- g. Withdraw *[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
- h. Exclude *[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.

The Hearings Panel has no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the Member *[and to the Parish Council]*, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five Members of the Council, including not more than one Member of the authority's Executive and comprising Members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the Members of Council.

A person cannot be “independent” if he/she –

- i. Is, or has been within the past 5 years, a Member, co-opted Member or officer of the authority;
- j. *[Is or has been within the past 5 years, a Member, co-opted Member or officer of a parish council within the authority's area], or*
- k. Is a relative, or close friend, of a person within paragraph i and j above. For this purpose, “relative” means –
 - i. Spouse or civil partner;
 - ii. Living with the other person as husband and wife or as if they were civil partners;
 - iii. Grandparent of the other person;
 - iv. A lineal descendent of a grandparent of the other person;
 - v. A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - vi. A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - vii. Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Appeals

There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One The authority's Code of Conduct – under development

Appendix Two Procedure for Investigations – under development

