

STANDARDS COMMITTEE

Venue: Town Hall, Moorgate
Street, Rotherham. S60
2TH

Date: Thursday, 10 November
2011

Time: 2.00 p.m.

A G E N D A

1. To determine if the following matters are to be considered under the categories suggested, in accordance with the Local Government Act 1972.
2. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
3. Minutes of the Previous Meeting held on 8th September, 2011 (herewith) (Pages 1 - 4)
4. Standards Committee Terms of Reference (report herewith) (Pages 5 - 14)
5. Voluntary Code of Conduct (report herewith) (Pages 15 - 35)
6. Bribery Act 2010 (report herewith) (Pages 36 - 40)

STANDARDS COMMITTEE
8th September, 2011

Present:- Mrs. A. Bingham (in the Chair); Councillors Buckley, Gilding and Hughes; Mr. P. Edler, Mr. D. Foster, Dr. G. Musson and Mr. N. Sykes and Councillors P. Blanksby and D. Rowley (Parish Councils' Representatives)

Apologies for absence were received from Councillor Middleton, Mr. M. Andrew and Mr. I. Daines and Ms. J. Porter.

B7 MINUTES

Resolved:- That the minutes of the meeting of the Committee held on 9th June, 2011 be approved as a correct record, subject to an amendment to Minute No. B3, Paragraph 3, to insert the two words "and amended" before the words "at the meeting".

B8 ANNUAL REPORT

Further to Minute No. B3 of the meeting of the Committee held on 9th June, 2011, consideration was given to the revised draft annual report presented by Richard Waller, Senior Manager, Legal and Electoral Services, which had been amended in light of Members' comments.

The Committee was happy with the content, but suggested a few further amendments to correct errors and updates to Dr. G. Musson's and Parish Councillor D. Rowley's pen portraits.

Resolved:- (1) That the amended draft report be received and the changes as suggested be approved.

(2) That the report be referred to full Council for adoption.

B9 PARISH COMPACT/QUESTIONNAIRE

Further to Minute No. B4 of the meeting of the Committee held on 9th June, 2011, Richard Waller, Senior Manager, Legal and Electoral Services, introduced the Standards for England template Parish Compact and the questionnaire devised by the working group under the chairmanship of the Vice-Chair. The questionnaire had been circulated to Parish Councils earlier in the year.

The objective of the Parish Compact was to facilitate closer working between Parish Councils and the Committee, in particular through joint working and training arrangements.

The Committee was mindful of the uncertainties around the Localism Bill and the difficulties of enthusing Town and Parish Councillors. To stimulate interest, the Vice-Chair of the Committee undertook to draft a letter for the Committee's consideration with a view to circulating the agreed draft to Parish Councils informing them that the Parish Compact was being reconsidered.

The Committee considered the draft letter and was minded to remove the wording in italics, preferring Parish Councils to make contact rather than offering meetings.

Resolved:- That the text of the draft letter be approved, subject to the removal of the words in italics, and the Senior Manager, Legal and Electoral Services, be authorised to circulate it to all Parish Councils.

B10 LOCALISM BILL AND THE FUTURE OF THE STANDARDS COMMITTEE

Further to Minute No. 38 of the meeting of the Committee held on 14th April, 2011, consideration was given to a report presented by Richard Waller, Senior Manager, Legal and Electoral Services, which referred to the Localism Bill receiving its third reading in the Lords on the 5th September, 2011 following which it would return to the House of Commons for consideration of any amendments made to the Bill by the Lords. The provisions of the Bill concerned with the standards regime (Chapter 5 (standards) and Schedule 4 (conduct of local government members) have so far remained unchanged. It was, therefore, likely that these provisions would become law in their current form.

Further information was provided on Chapter 5 and the duty placed upon certain authorities and Town and Parish Councils to promote and maintain high standards of conduct by members and co-opted members of the authority (Clause 16 of the Bill).

At its meeting on the 14th April, 2011, the Committee identified a number of issues to be addressed were the Council minded to adopt a voluntary code of conduct overseen by a Standards Committee and the Committee was also invited to submit their views on the Standard Committee's future.

The Committee also noted that the Director of Legal Services at Sheffield City Council recently circulated an e-mail to the Monitoring Officers of Barnsley and Doncaster Councils and the Council advocating a shared standards regime. Drafts of Sheffield's proposed Standards Protocol and draft procedure for dealing with allegations of breach of the Sheffield Code of Conduct were set out in detail as part of the report.

It was suggested that the issues be explored over the next few months with a view to proposing to the Cabinet and the Council an appropriate standards regime and voluntary code of conduct once the Localism Bill had become law.

The Committee sought clarification on the regulations and the sanctions that could be imposed.

Discussion ensued on the shared arrangement which would invariably result in members of the Standards Committees of the four Local Authorities having to comply with a uniform standard of code and could lead to concerns over a lack of knowledge and independent view.

The Committee was mindful of the changing environment, the need for more prescriptive Terms of Reference and how the complaint workload would change, but did not want to dismiss the wider role of the Standards Committee.

It was suggested that further comments on this matter be sent to the Monitoring Officer by the 30th September, 2011, following which a meeting be arranged with the Chairman and Vice-Chairman to draw up draft Terms of Reference and for them to be submitted back to the next meeting for consideration.

Resolved:- (1) That the contents of the report be noted.

(2) That any comments be forwarded to the Monitoring Officer by the 30th September, 2011, following which a meeting be arranged with the Chairman and Vice-Chairman of the Standards Committee to draw up draft Terms of Reference and for them to be submitted back to the next meeting for consideration.

B11 COUNCILLOR JUDITH DALTON

Consideration was given to a report presented by Richard Waller, Senior Manager, Legal and Electoral Services, which set out the alleged circumstances that led to an assessment and resultant review hearing relating to Councillor Judith Dalton, who was a member of the Council and a member of Anston Parish Council.

The review panel directed that Councillor Dalton should undergo further training and directed the Monitoring Officer to write to Councillor Dalton to arrange further training on the code, specifically with regard to personal and prejudicial interests.

Following receipt of the review panel's decision notice and the Monitoring Officer's letter, Councillor Dalton wrote to him and ultimately asked the Committee to reconsider its decision in light of this information, as she felt strongly that her good intentions had led to her reputation being called into question and that she should have the opportunity to refute the allegation.

The review panel's decision to direct the Monitoring Officer to carry out certain actions was irrevocable and could only be challenged by way of judicial review.

The assessment and review panels' decisions were currently in the Standards Committee's pages of the website. Members may, therefore, wish to consider whether these decisions should be removed from the website in light of the new information that Councillor Dalton had referred the matter to the Parish Council for a decision and had neither chaired, spoke nor voted at the meeting.

Whilst being somewhat sympathetic to Councillor Dalton's situation, the Committee believed that the decision of the review panel was right that she would benefit from some training to improve her understanding of the principles of the Code, but was in agreement that the decision notices from the assessment and review hearings be removed from the Council's website.

Resolved:- (1) That the contents of the report be noted and the Monitoring Officer be directed to advise Councillor Judith Dalton that the decision of the 26th May, 2011 review panel was final.

(2) That, in light of the new information, the decisions of the assessment and review panels of 24th February and 26th May, 2011 be removed from the website, but in the best interests of Councillor Dalton training should still be offered.

B12 MR. NEIL FULCHER

Consideration was given to a report presented by Richard Waller, Senior Manager, Legal and Electoral Services, which set out the circumstances that led to a referral to the Standards Board for England who in turn referred it for investigation by an Ethical Standards Officer relating to Mr. Neil Fulcher.

The Ethical Standards Officer found Mr. Fulcher not to be in breach of the Code in relation to Councillor Bradley's allegation that he had withheld from the members of the Parish Council legal advice given by Mr. Mumford, but in breach in relation to Mr. Waller's allegation. In the course of his investigation the Ethical Standards Officer also found evidence of other breaches of the Code in relation to Councillor Bradley, Mr. Mumford and another Council officer, Mr. K. Battersby.

The case was heard by the First-tier Tribunal on 19th July, 2010 on the basis of written submissions as Mr. Fulcher had informed the tribunal that he would not be attending the hearing and as a result was suspended from membership of Bramley Parish Council for a period of six months.

Mr. Fulcher then appealed to the Upper Tribunal on a number of grounds the majority of which were dismissed. However, the Upper Tribunal did find that the First-tier Tribunal had fallen into error as in its statement of reasons it linked the allegations in relation to Mr. Mumford and Mr. Battersby with Mr. Waller's complaint rather than treating them as separate allegations upon which it was required to make specific findings and give reasons on the basis of the written evidence before it.

However, as Mr. Fulcher had already served his six months' suspension at the time the Upper Tribunal heard the appeal, the tribunal and Mr. Fulcher considered little would be achieved from reducing the period of suspension to five months.

Resolved:- That the contents of the report be noted.

B13 MR. ALAN HARSTON

The Committee paid tribute to Mr. Alan Harston and thanked him for all his help and support. They wished him well in his retirement.

B14 DATE AND TIME OF THE NEXT MEETING

Resolved:- That the next meeting of the Standards Committee take place on Thursday, 13th October, 2011 at 2.00 p.m.

ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS
--

1.	Meeting:	Standards Committee
2.	Date:	10 November 2011
3.	Title:	Standards Committee Terms of Reference
4.	Directorate:	Chief Executive's

5. Summary

On 8th September the Committee resolved that committee members might write to the monitoring officer with suggestions for changes to the Committee's current terms of reference, which are appended as Appendix A. The monitoring officer was then to meet with the Chair and Vice-Chair of the Committee to discuss the suggestions.

Following that meeting and in light of the discussion, the monitoring officer revised the Committee's terms of reference, which are attached for members' consideration at Appendix B.

The following suggestions were considered:-

Membership

- Reduce the number of members of the Committee but maintain the current balance in favour of independent members.
- Maintain the current balance in favour of independent members of a committee composed of fewer members by restricting the membership to 6 independent members (including chair and vice-chair), 3 elected members and 2 parish councillors – this would also permit 5 member panels comprised of 3 independents, 1 elected member and one parish councillor.
- The composition of the Standards Committee could be:
 - 10 members comprised of 8 independent members and 2 elected members in order to maximise public confidence in the Committee and its role; or
 - 10 members comprised of 6 independent members and 4 elected members; or
 - left as it currently is (except for removing the requirement for town and parish council members) as this works well.

- The number of members of the Committee should be 13 and they should choose the Chair and Vice-Chair of the Committee.
- Members of the Committee should be totally independent and elected members should not sit on the Committee.

N.B. The Committee is currently comprised of 15 members comprised of eight independent members, 3 elected members and 3 parish council members.

Frequency of meetings

- The Committee should meet bi-monthly.
- Assessment and review panels should continue to meet as and when required.

Code of Conduct

- Use the statutory code as the framework for a voluntary code but consolidate some of its provisions.
- Base the voluntary code on the statutory code with appropriate amendments to reflect the provisions of the Localism Bill.
- Open a dialogue with parish councils if there is widespread support for a voluntary code administered by Rotherham Borough Council.

N.B. Letter circulated to parish councils

Complaints

- Assessment and review panels should be composed of:
 - 3 independent members with the remaining 3 independent members available to review assessment panel decisions; or
 - 2 independent members and 1 elected member with 1 of the independent members taking the chair.
- Develop the complaints procedure, in particular by strengthening and balancing the preliminary stage of the procedure by permitting limited investigation of the facts, so that the sub-committee that considers the complaint has a better understanding.
- Investigation of complaints should follow current practice suitably modified to reflect changes in the law.

N.B. Standards Committee Manual will require revision.

Sanctions

- For breach of the voluntary code, the sanctions could be:
 - public admonishment of a parish councillor or elected member;
 - in the most serious cases not involving failure to declare a personal and prejudicial interest reduction or suspension of an elected member's personal allowances (subject, to approval of the full Council).
- Parish councils should not be eligible for Quality Status if a member is found to be in breach of the voluntary code.
- The right to ask for a review of an assessment panel's decision should be available only in limited circumstances, for example where new and significant information has been received after the panel made its decision.
- The complaints procedure should address repetitive, frivolous and vexatious complaints.

Alternative arrangements

- The option of a sub-regional shared standards committee would only work with a common code of conduct.
- Keep the audit and standard committees separate.
- Joint arrangements with other local authorities are not recommended.
- Adoption of the Sheffield proposal is not recommended, not least because officers should be acting under the Committee's direction.

Town and parish councils

- Rotherham Borough Council's policy on charging parish councils to administer a standards regime requires early resolution.
- Concentrate on borough council until firm commitment from all town and parish councils.
- Remove references to Standards for England and town and parish councils.

Miscellaneous

- The terms of reference should include a requirement to review and inform Rotherham Borough Council of any weaknesses or failings in any council systems and recommend actions.

- Rotherham Borough Council's "Right to speak" policy should apply to meetings of the Standards Committee.
- Most of the current terms of reference would still be relevant.

6. Recommendations

IT IS RECOMMENDED that members consider and approve the proposed amendments to the Committee's terms of reference, subject to any conflicting legislative requirements following the enactment of the Localism Bill.

7. Proposals and details

Please see paragraph 5.

8. Finance

There are no financial implications arising directly from this report.

9 Risks and Uncertainties

Until the Localism Bill becomes law, the direction of the standards regime will remain unclear.

10 Policy and Performance Agenda Implications

The Council is dedicated to high standards of conduct and will be under a duty to promote and maintain such standards by members and co-opted members following the Bill becoming law.

11 Background Papers and Consultation

Localism Bill

12 Contact: Richard Waller, Senior Manager, Legal and Electoral Services

Telephone: (01709) 8254456

E-mail: richard.waller@rotherham.gov.uk

STANDARDS COMMITTEE – TERMS OF REFERENCE

1. To promote and maintain high standards of conduct by the members and co-opted members of the Council.
2. To assist members and co-opted members of the Council to observe the Council's Code of Conduct.
3. To advise the Council on the adoption and revision of its Code of Conduct, taking into account the Model Code of Conduct, guidance from the Standards Board for England and elsewhere, and existing good practice within the Council.
4. To monitor the operation of the Code of Conduct and recommend revisions as appropriate, and to ensure that the Code is fully understood and applied throughout the Council.
5. To advise, train or arrange to train members and co-opted members of the Council on matters relating to the Code of Conduct.
6. To give dispensation to Members and Co-opted Members of the Council under the Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002.
7. To carry out similar functions to those above in relation to the Parish Councils for which the Council is the responsible authority and the members of those Parish Councils.
8. To review arrangements as to the declarations of interest of members, co-opted members and officers, to monitor the operation of such arrangements and to offer advice on their application.
9. To review and recommend such other protocols, local codes and guidance as may be considered desirable to build upon the rules contained within the Code of Conduct whilst not forming part of it.
10. To establish Sub-Committees:-
 - (a) To carry out the initial assessment of written allegations that members of the Council or of a Parish Council have failed to comply with the Code of Conduct.
 - (b) To review at the request of the person making the allegation any decision to take no action.
 - (c) To receive the report of the Monitoring Officer (or person nominated by him) into any complaint referred to the Monitoring Officer and, following consideration of such report to take any action prescribed by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.
11. To consider any report made to the Committee or the Monitoring Officer by an Ethical Standards Officer following an investigation into an allegation of a breach of the Code of Conduct and following consideration of such report to take any action prescribed by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

12. To consider any other recommendations, guidance or direction referred to the Committee or the Monitoring Officer by an Ethical Standards Officer or the Standards Board for England.
13. To provide any information required by the Standards Board for England regarding the exercise of the Committee's functions.
14. To consider any application for exemption from political restriction made to the Committee by the holder of any post under the Council and to give directions to the Council requiring it to include a post in the list of political restricted posts maintained by the Council.
15. To establish and monitor the operation of Complaints Procedures and Whistleblowing Procedures.
16. To review the application of the Council's Standing Orders, Financial Regulations, contract arrangements and other such provisions.
17. To review and comment upon the Council's procedures and Codes of Practice relating to public access to information, confidentiality and arrangements for data protection.
18. To review the procedures for appointment of Council representatives to outside bodies and to make recommendations to the Council or the Cabinet as necessary.
19. To consider reports arising from external inspections, audit investigations, Ombudsman investigations, legal challenges and other sources which cast doubt on the honesty or integrity of the Council, its members or officers, and to recommend action to the full Council or Cabinet as appropriate.
20. To consider and offer advice and guidance as appropriate on other matters which in the view of the Committee or the Council's Monitoring Officer could have a bearing on public perceptions of the honesty and integrity of the Council, its members, co-opted members and officers.
21. To consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred for attention by the Council or the Cabinet which further the aim of promoting and maintaining the highest standards of conduct within the authority.

In these Terms of Reference "co-opted member of the Council" means a person who is not a member of the Council, but who:-

- (a) is a member of any Committee or Sub-Committee of the Council, or
- (b) is a member of and represents the Council on any Joint Committee or Joint Sub-Committee of the Council

and who is entitled to vote on any question which falls to be decided at any meeting of that Committee or Sub-Committee.

Appendix B

STANDARDS COMMITTEE – TERMS OF REFERENCE

1. To promote and maintain high standards of conduct by the members and co-opted members of the Council.
2. To assist members and co-opted members of the Council to observe the Council's voluntary Code of Conduct.
3. To advise the Council on the adoption and revision of its voluntary Code of Conduct, taking into account any relevant guidance and existing good practice within the Council.
4. To monitor the operation of the voluntary Code of Conduct and recommend revisions as appropriate, and to ensure that the Code is fully understood and applied throughout the Council.
5. To advise, train or arrange to train members and co-opted members of the Council on matters relating to the voluntary Code of Conduct.
6. To give dispensation to Members and Co-opted Members of the Council in accordance with any statutory requirements and relevant guidance.
7. [Not used]
8. To review arrangements as to the declarations of interest of members, co-opted members and officers, to monitor the operation of such arrangements and to offer advice on their application.
9. To review and recommend such other protocols, local codes and guidance as may be considered desirable to build upon the rules contained within the voluntary Code of Conduct whilst not forming part of it.
10. To establish Sub-Committees:-
 - (a) to carry out the initial assessment of written allegations that members of the Council have failed to comply with the voluntary Code of Conduct;

- (b) to review, subject to the provisions on the right of review contained in the Local Assessment Criteria, at the request of the person making the allegation any decision to take no action; and
- (c) to receive the report of the Monitoring Officer (or person nominated by him) into any complaint referred to the Monitoring Officer and, following consideration of such report to take such actions or make such recommendations to the full Council that

11. [Not used]

12. [Not used]

13. [Not used]

14. [Not used]

15. To establish and monitor the operation of Complaints Procedures and Whistleblowing Procedures.

16. To review the application of the Council's Standing Orders, Financial Regulations, contract arrangements and other such provisions.

17. To review and comment upon the Council's procedures and Codes of Practice relating to public access to information, confidentiality and arrangements for data protection.

18. To review the procedures for appointment of Council representatives to outside bodies and to make recommendations to the Council or the Cabinet as necessary.

19. To consider reports arising from external inspections, audit investigations, Ombudsman investigations, legal challenges and other sources which cast doubt on the honesty or integrity of the Council, its members or officers, and to recommend action to the full Council or Cabinet as appropriate.

20. To consider and offer advice and guidance as appropriate on other matters which in the view of the Committee or the Council's Monitoring Officer could have a bearing on public perceptions of the honesty and integrity of the Council, its members, co-opted members and officers.

21. To consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred for attention by the Council or the Cabinet which further the aim of promoting and maintaining the highest standards of conduct within the authority.

In these Terms of Reference “co-opted member of the Council” means a person who is not a member of the Council, but who:-

(a) is a member of any Committee or Sub-Committee of the Council, or

(b) is a member of and represents the Council on any Joint Committee or Joint Sub-Committee of the Council,

and who is entitled to vote on any question which falls to be decided at any meeting of that Committee or Sub-Committee.

ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS
--

1.	Meeting:	Standards Committee
2.	Date:	10 November 2011
3.	Title:	Voluntary Code of Conduct
4.	Directorate:	Chief Executive's Directorate

5. Summary

Since the Committee last met on 8th September, it seems that the Government may have had a change of heart and there may be a statutory code of conduct after all. The Bill is set for its 3rd Reading in the House of Lords on 31 October.

A press statement on the Bill, issued by the Association of Council Secretaries and Solicitors (ACSeS), is reproduced at **Appendix A**, the ACSeS commentary on the standards clauses in the Bill together with the ACSeS draft model code of conduct is reproduced at **Appendix B** and a copy of the statutory model code of conduct is reproduced at **Appendix C**.

ACSeS anticipate:

- local authorities being obliged to adopt a code of conduct;
- the adopted code will contain provisions recommended by the Local Government Association and the National Association of Local Councils respectively plus provisions particular to each authority;
- the LGA and NALC will be required to review their respective codes as appropriate.

The ACSeS code of conduct is a paler and vaguer version of the statutory code.

6. Recommendations

It is recommended that the Committee notes the apparent change in the Government's position, and the ACSeS draft voluntary code of conduct as the possible basis of a model voluntary code of conduct.

7. Proposals and details

Please see paragraph 5.

8. Finance

There are no financial implications arising directly from this report.

9 Risks and Uncertainties

Until the Localism Bill becomes law, the direction of the standards regime will remain unclear.

10 Policy and Performance Agenda Implications

The Council is dedicated to high standards of conduct and will be under a duty to promote and maintain such standards by members and co-opted members following the Bill becoming law.

11 Background Papers and Consultation

The Localism Bill

12 Contact: Richard Waller, Senior Manager, Legal & Electoral Services

Telephone: (01709) 8254456

E-mail: richard.waller@rotherham.gov.uk

Association of Council Secretaries and Solicitors

[Members Login »](#)

Search Site

[Homepage](#)
[About Us](#)
[What We Do](#)
[News](#)
[Events](#)
[Gallery](#)
[Documents](#)
[Forum](#)
[Membership](#)
[Contact](#)

News

Standards and the Localism Bill - Press Release

27 July 2011

1. ACSeS has previously expressed its concerns about the present proposals for standards in Chapter 5 of Part 1 of the Localism Bill.
2. In particular, ACSeS is concerned at the absence of cohesion between the proposed duty in clause 16 on authorities to promote and maintain high standards of conduct by local authority members and the permissive nature of the proposed standards framework.
3. Whilst supporting the principles of localism (to enable wherever practicable and appropriate local self-determination at the lowest community levels) ACSeS equally believes that there needs to be some fundamental national consistency in local ethical and corporate governance. ACSeS is therefore concerned that the voluntary nature of the present proposals is likely to lead to public confusion as to the essential standards to be expected of those whom electors choose to represent them at local level.
4. ACSeS is also concerned at the current intention to criminalise breaches of members' interests provisions. Whilst the maintenance of high standards of conduct for local authority members is an essential pillar of public trust in local democracy, ACSeS nevertheless believes that criminal sanctions should be reserved for objectively egregious behaviour. Whilst some breaches of member interest rules may occasionally fall within this category, most will not. Blanket criminalisation therefore is considered to be disproportionate. However, this could also have the undesirable side-effect of encouraging vexatious allegations which would risk bringing the provisions into disrepute. There are also doubts as to the practical enforceability of such measures
5. In the circumstances, ACSeS was pleased to note that shortly before the Parliamentary recess Lords Newton (Con), Tope (Lib Dem) Filkin (Labour) and Bichard (Cross Bench) (amongst others) met to discuss the treatment of standards in the Localism Bill. The meeting was to discuss proposed amendments to be moved when Parliament resumes on 5 September 2011.
6. ACSeS understands that the outcome was to seek potential amendments to the Localism Bill with a view to provisions for a national code of conduct (to be issued through the Local

APPENDIX A

Government Association if it agrees), standards committees with independent chairs and the removal of criminal sanctions.

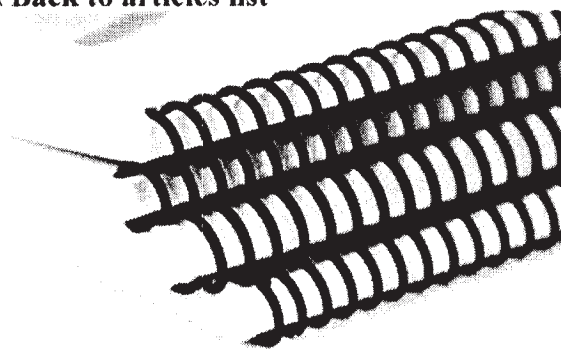
7. ACSeS President, Susan Tovey said: 'Local authority members dedicate their time in working hard and unremittingly to fulfil a vital role for their communities. They can truly be said to be the foundation-stones of localism and local democracy. However, to maintain and enhance public trust in local democratic institutions it is essential that those representing the public are seen to be behaving as electors would reasonably expect and that the decisions taken by council members are actuated only by the public interest.
The recent phone-hacking scandal has highlighted the public importance of sound ethical and corporate governance, even in a private sector context. Clearly, sound corporate governance is significantly more important for public institutions. ACSeS is therefore very pleased at the initiative taken by this small group of peers, informed by the distinguished Chairman of the Committee on Standards in Public Life, and is delighted to express the Association's public support for it.'

Notes for Editors

1. ACSeS represents Chief and Senior Legal Officers of all English and Welsh local authorities and is the professional association for managers of corporate governance (legal, administrative, democratic, scrutiny and standards functions) and statutory monitoring officers and their deputies in local authorities in England and Wales.
2. The Association plays a leading role in developing governance arrangements in local government and works closely with other associations, Government Departments and agencies.
3. The Association also provides a network for its members to enable discussion, consultation, training and development on legal and governance matters.
4. Susan Tovey, who was elected President of ACSeS at its Annual General Meeting on 18 November 2010, is the Head of Legal and Democratic Services at Test Valley Borough Council.

For all Press Enquiries, please contact our Communications Officer: Dr. Nicholas Dobson
nicholas.dobson@pannone.co.uk

« Back to articles list



View our document library »

Press Information

We've gathered some useful information for the press.

View information »

**Localism Bill
Standards Clauses**

Since the Bill was first introduced, considerable changes have been made to the standards clauses and further changes now seem likely. The Bill is currently going through the report stage in the House of Lords and both Government amendments and other amendments are being considered. Parliament is in recess at present during the political party conference season. The Lords will resume the report stage debate on 10 October.

It became apparent on 14 September that the Government was likely to lose the vote on an amendment for local authorities to have a code of conduct moved by Lord Bichard and supported by both Conservative and Lib-Dem peers. This prompted a Government whip, Lord Taylor, to agree to open discussions on the content of the clauses as a customary means in the Lords of avoiding Government defeat. The amendment was not moved and the government amendments were accepted (presumably for the time being).

The following is a brief summary of the current clauses in the Bill;

Chapter 4 Predetermination

CI 14 Prior indications of view of a matter not to amount to predetermination etc

Chapter 5 Standards

CI 15 Amendment of existing provisions

Applies Schedule 4 which repeals most of the LGA 2000 standards provisions

CI 16 Duty to promote and maintain high standards of conduct

CI 17 Voluntary codes of conduct

Enables a LA to adopt a code. Includes a requirement for LA to consider investigation in response to allegation of failure to comply, and to investigate as appropriate and to take action.

New CI 18 Register of interests

Requiring MOs to maintain register of interests (including for PCs). Up to LAs to determine what to include, subject to below.

New CI after 18 - Disclosure of pecuniary interests on taking office

Requires pecuniary interests to be notified to the MO. Limits pecuniary interest to the interests of the cllr and spouse/partner. Description of pecuniary interest to be in regulations.

New CI after 18 - Pecuniary interests in matters considered at meetings or by a single member

Restricts a member having a disclosable pecuniary interest from participating in any discussion of the matter at the meeting and voting. Requires interest to be notified to MO if interest not on register. (Requirements subject to sensitive interest and dispensation provisions below.)

Standing orders may provide for exclusion of a member who is restricted from so participating.

New CI after 18 - Sensitive Interests

Enables interests where disclosure of the detail could lead to the cllr being subject to violence or intimidation to have the detail omitted from public disclosure.

New CI after 18 - Dispensations from section (Pecuniary interests in matters considered at meetings or by a single member)

Provision for authority to grant dispensation to relieve member of participation and voting restriction (above) in certain circumstances

CI 19 offence of breaching regulations under section 19

Amends CI 19 to provide offences of failing to comply with obligation to disclose pecuniary interest and participating in contravention. Also of providing false or misleading information in relation to the disclosure obligations.

New CI after 19 Delegation of functions by Greater London Authority

Enables Mayor of London and London Assembly to arrange for functions under these clauses to be delegated to GLA staff and to a 'standards committee'. (This provision requested by GLA)

The new standards framework

The minimum framework to operate a code of conduct would appear to include the following;

- a) A duty to maintain standards
- b) A duty to adopt a code (or list of agreed standards)
- c) The means of including uniform contents in the code across local government
- d) Arrangements to enforce the code
- e) Arrangements for applying sanctions
- f) Where there are other statutory requirements (e.g. about interests and criminal sanctions) there should be clarity about any overlap of jurisdiction.

A mandatory code

It seems likely that, following the concession of Lord Taylor in the House of Lords, the Government will include a provision requiring local authorities to adopt a code. It seems clear that, under the deregulation strategy, the Government does not want to impose a statutory code formulated by regulation. There is concern however that codes of conduct should be uniform across principal councils (or at least contain mostly uniform provisions), and presumably the same for parish councils. As the representative bodies of principal authority and parish councils respectively, there is logic in The LGA and NALC accepting leadership responsibility for producing uniform code provisions. A way forward would be for a provision to the effect that;

- a) Local authorities must adopt a code of conduct
- b) This obligation be met by the adoption of a code containing requirements recommended by LGA and NALC respectively (with the option available for local authorities to include additional requirements as they see fit)

c) The LGA and NALC be required to promulgate codes of conduct (and to review them and revise them as appropriate)

Current Cl 17 would require amending accordingly.

Enforcement and sanctions

Cl 17 is fairly bald on what arrangements a local authority needs to have in place to enforce its code of conduct and also as to what sanctions could be taken by a local authority for breach. The power to 'take action' would appear to be limited to making administrative arrangements and presumably passing a decision of censure. This sort of limited sanction would avoid the application of the 'fair trial' obligations under Human Rights legislation and obviate the need for any formal appeal mechanism. Whilst the broad flexibility allows LAs to be proportionate in what they do, it would seem to be reasonable to enable LAs to suspend payment of allowances for a limited period (assuming this power is not already available to local authorities - the position is not completely clear.)

Overlap with criminal provisions

One possible overlap in the current Localism Bill provisions is the extent that a local authority could take any action in addition (or substitution) to that taken (or not taken) by the Police, CPS and Court in relation to a criminal infringement. The situation is not clear. Can/should the code repeat the statutory requirements on interests?

Under the new Cl 18 pecuniary interests are limited. The code would need to make provision for other pecuniary interests (i.e. those of other members of family, relatives, friends, which currently could expose a LA to a bias claim if not otherwise dealt with).

The code would also need to deal with other interests (e.g. as per the existing code) which, if not dealt with, would put the trust relationship vis a vis the electorate at risk.

Predetermination

It remains the Government's position that Cl 14 does not involve a change in the law. (Which, of course, begs the question why the clause is necessary in the first place!) An effect of the clause is that evidence available to a Court under current law, that might be relevant as to whether a decision is tainted by bias, would no longer be available to the Court to consider. So a decision that *might* be tainted by bias today, having regard to pre decision evidence, would not be so tainted when the clause comes into effect.

So a change in the law is surely being made by Cl 14.

The courts have, of course, gone a long way in recognising that politicians need to be politicians and that not all what they say is necessarily what they do at the point of decision making. In effect, the courts already apply a presumption against bias in relation to local elected representatives to enable democracy to work in the way it has developed.

Conclusion

The ill thought through approach of the Government to changing the standards regime of local government is causing a problem for Parliament in dealing with the Localism Bill. On the hoof amendments are at risk of creating more problems than they resolve. The current clauses do not provide a clear and cohesive framework for local government to work on. Further compromise amendments will hopefully improve the substitute framework the Government is now applying in substitution for the 2000 Act regime. One cannot help thinking that Parliament will have no option but to again review the application of standards to local government in due course. One wonders what Lord Nolan might have thought of it all. Sadly, he died in 2007.

Tony Kilner

Policy and Development Officer

ACSeS

Sept 2011

Ethical Governance Portfolio

Draft CODE OF CONDUCT

Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the "Nolan Principles – the seven principles of public life" which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

Interpretation

In this Code—

"meeting" means any meeting of—

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

"member" includes a co-opted member and an appointed member.

General Obligations

1. When acting in your role as a member of the authority:

1.1 **Do** treat others with respect.

1.2, **Do not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional *legal* advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (cc) you have consulted the Monitoring Officer prior to its release; or

1.4 **Do not** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority—

2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies listed at appendix 3, copies of which have been provided to you and which you are deemed to have read ;

2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and

2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Interests [Subject to localism Bill]

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

Disclosure and participation [Dependant on contents of interests Above]

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.

6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer

or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.

8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

Pre-determination or bias [Subject to Localism Bill provisions]

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

10 When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

Interests arising in relation to overview and scrutiny committees [Subject to Localism Bill provisions]

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—

11.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

11.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken;

Or

11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

You may attend a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

APPENDIX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE**SELFLESSNESS**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, *unless* it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Deborah Collins
Ethical Governance Portfolio Officer

THE MODEL CODE OF CONDUCT

Part Part1

Introduction and interpretation

1

- (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code--

"meeting" means any meeting of--

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's

APPENDIX C

standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you--
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,
- and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6 (a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority--
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3

- (1) You must treat others with respect.
- (2) You must not--
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be--
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of subparagraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4

You must not--

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where--
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is--
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6

You--

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority--
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7

(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by--

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

NOTES

Initial Commencement

Specified date

Specified date: 3 May 2007: see art 1(1).

UK Parliament SIs 2000-2009/2007/1151-1200/Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159)/SCHEDULE The Model Code of Conduct/Part 2 Interests

Part Part2

Personal interests

8

- (1) You have a personal interest in any business of your authority where either--

- (a) it relates to or is likely to affect--

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body--

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

- (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner,

APPENDIX C

a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of--

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is--

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9

(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business--
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of--
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where--

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12

- (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority--
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held--
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

NOTES

Initial Commencement

Specified date

Specified date: 3 May 2007: see art 1(1).

UK Parliament SIs 2000-2009/2007/1151-1200/Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159)/SCHEDULE The Model Code of Conduct/Part 3 Registration of Members' Interests

Part Part3

Registration of members' interests

13

(1) Subject to paragraph 14, you must, within 28 days of--

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14

(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to

violence or intimidation.

NOTES

Initial Commencement

Specified date

Specified date: 3 May 2007: see art 1(1).

UK Parliament SIs 2000-2009/2007/1151-1200/Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159)/EXPLANATORY NOTE

ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS
--

1.	Meeting:	Standards Committee
2.	Date:	10 November 2011
3.	Title:	Bribery Act 2010
4.	Directorate:	Chief Executive's Directorate

5. Summary

Introduction

The Bribery Act 2010 came into force on 1st July 2011 and consolidated the law on bribery. It replaced the offences at common law and under the Prevention of Corruption Acts 1889 – 1916 with two general offences: the first deals with bribery and the second deals with being bribed. The basis of a bribe is an intention to induce improper conduct.

The Bribery Act is not concerned with fraud, theft, books and record offences, Companies Act offences, money laundering offences or competition law.

A bribe has three elements: (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent.

Offences

The 2010 Act creates offences of –

- offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery);
- bribery of foreign public officials; and
- failure to prevent a bribe being paid on an organisation's behalf.

Active and passive bribes

A person commits an offence (i) by offering, promising or giving a financial or other advantage to another person where he intends to bring about the improper performance by another person of a relevant function or activity or to reward such improper performance; or (ii) he knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function.

“Improper performance” means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. The offence applies to both the public and private sector, including bribery relating to any function of a public nature, connected with a business, performed in the course of a person’s employment or performed on behalf of another company or another body of persons.

In deciding whether a function or activity has been performed improperly, the test is what a reasonable person in the UK would expect in relation to the performance of that function or activity.

Failure to prevent a bribe

Failure to prevent a bribe is a new offence which can be committed by commercial organisations, which includes for this purpose a local authority. The offence is committed where a person associated with the organisation bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation.

An organisation has a defence however if it can prove on the balance of probability that despite an incident of bribery it had adequate procedures in place to prevent persons associated with it from bribing.

A person is associated with an organisation where the person “performs services” for or on behalf of the organisation. The word “person” is given a broad meaning and may be an individual, a company or unincorporated association, such as a community group. Agents and subsidiaries are included as well as employees who are presumed to be performing services for their employer.

The question of association is however ultimately to be determined from all of the relevant circumstances and not simply by reference to the nature of the relationship between the person concerned and the organisation.

Consequently, contractors could be “associated” persons when performing services on the organisation’s behalf, and in certain circumstances suppliers could be too if they are providing services and not just supplying goods.

In the case of supply chains involving several organisations, or a contract with a main contractor and several sub-contractors, the Act’s reach is considered to extend no further than immediate contractual relationships. The risk inherent in such arrangements may be mitigated however by requesting the counterpart of each party in the chain to adopt a similar approach to bribery prevention with its counterpart.

The new offence is in addition to the other bribery offences that may be committed by persons who are running an organisation and considered to be the “directing mind” or will of the organisation.

In order to be liable for failure to prevent a bribe, an organisation must have failed to prevent conduct that would be an active or passive bribe, but a person need not have been convicted of an active or passive bribe before the offence of failing to prevent such conduct is engaged. Nevertheless, the prosecution must still be able to prove beyond reasonable doubt an active or passive bribery offence before the failure offence is triggered.

Whether an organisation's bribery prevention procedures are adequate depends on the facts of each case, including consideration of the level of control over the activities of the associated person and the degree of risk that requires mitigation.

Guidance

At the heart of the Act is the core principle of proportionality, which essentially requires an organisation to have in place procedures that are proportional to the level of risk of bribery that it faces.

Guidance issued by the Secretary of State for Justice under the Act contains details of procedures an organisation can put in place to prevent bribing on its behalf. These are informed by six principles, which are set out at Appendix A to this report.

Rotherham Borough Council

The Council has a number of measures in place designed to prevent incidents of bribery and fraud all of which embrace the Secretary of State's six principles. Internal Audit colleagues are currently updating the Council's Anti-fraud Strategy & Corruption Policy to reflect the requirements of the Act and will be making certain recommendations to the Audit Committee shortly. In addition to the anti-fraud policy, there are a number of other council documents that will require updating, for example Standing Orders, Financial Regulations, the Code of Official Conduct and model contract clauses.

6. Recommendations

IT IS RECOMMENDED that –

- 1. Members are requested to note this report.**
- 2. Members are requested to approve the monitoring officer and internal audit manager devising and implementing a joint programme of work to refresh and update council documents and procedures in light of the coming into force of the Bribery Act 2010 and guidance on the Act published by the Secretary of State for Justice.**
- 3. Members are requested to approve referral of this report to the Audit Committee.**

7. Proposals and details

Please see paragraph 5.

8. Finance

Other than officer time, there are no direct financial implications from this report.

9 Risks and Uncertainties

Having properly documented policies and procedures to guard against bribery reduces the risk of the Council being found to have failed to prevent bribery.

10 Policy and Performance Agenda Implications

Guarding against incidents of bribery safeguards the use of public funds and accords with the Council's Corporate Plan and Community Strategy.

11 Background Papers and Consultation

Bribery Act 2010

Guidance on the 2010 Act published by the Secretary of State for Justice

12 Contact: richard.waller@rotherham.gov.uk

Telephone: (01709) 823121

E-mail: Richard.waller@rotherham.gov.uk

APPENDIX

The Bribery Act 2010

Guidance of Secretary of State for Justice

Principles

Principle 1: Proportionate procedures

A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

Principle 2: Top-level commitment

The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Principle 3: Risk assessment

The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

Principle 4: Due diligence

The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

Principle 5: Communication (including training)

The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.

Principle 6: Monitoring and review

The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.