

STANDARDS COMMITTEE

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

Date: Thursday, 10 May 2012

Time: 2.00 p.m.

A G E N D A

1. Apologies for Absence.
2. To determine if the following matters are to be considered under the categories suggested, in accordance with the Local Government Act 1972.
3. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
4. Minutes of the previous meeting held on 12th April, 2012 (herewith) (Pages 1 - 4)
5. Correspondence of the Chief Executive (herewith) (Pages 5 - 6)
6. Draft Report on Standards Regime (herewith) (Pages 7 - 30)
7. Revised Code of Conduct (Draft Report as submitted to the Cabinet on 25th April, 2012) (herewith) (Pages 31 - 49)
8. Draft Letter to Parish Councils (herewith) (Pages 50 - 51)

STANDARDS COMMITTEE
Thursday, 12th April, 2012

Present:- Mrs. A. Bingham (in the Chair); Councillors Buckley, Gilding and Middleton; Messrs. M. Andrew, P. Edler, D. Foster and N. Sykes, Dr. G. Musson, Ms. J. Porter and Mr. D. Bates and Mr. D. Rowley (Parish Councils' Representatives)

Apologies for absence were received from Councillor Hughes and Mr. I. Daines

B33 MINUTES OF THE PREVIOUS MEETING HELD ON 29TH MARCH, 2012

Resolved:- That the minutes of the meeting of the Committee held on 29th March, 2012 be approved as a correct record, subject to the following amendments:-

Minute Nos. B30 and B31 change places and be numbered accordingly.

New Minute No. B30 (Response to the Localism Act 2011):-

- First Paragraph – to now read “Further to Minute No. B25 of the meeting of the Standards Committee held on 8th March, 2012, consideration was given to a further report presented by the Chairman of the Standards Committee which set out the collective concerns about a number of areas of the Localism Act concerned with standards. It was suggested that an Independent Sub-Committee could consider complaints or allegations of misconduct by Members.
- Second Paragraph – to insert the word “an Independent” before Sub-Committee and remove the words “comprised of Independent Members”.
- Fourth Paragraph - to insert the word “an Independent” before “Sub-Committee” and remove the words “comprised of Independent Members or Independent Members and Independent Persons”.
- Fifth Paragraph – to insert “[s]” after “Person” on lines two, four and six.
- Seventh Paragraph – to insert the word “an Independent” before “Sub-Committee”.
- Tenth Paragraph and last two italic bullet points – to insert “[s]” after “Person” on lines two, four and six.
- To insert the following words immediately after the bullet points in italics:-

“The Chairman stated on several occasions throughout the meeting that, within the report the term “Independent/Independence” was used in a general sense and that at no point did it state, or should it be read as referring to, Independent Members of the current Standards Committee.

The Committee agreed that this should be made explicit in its response to

the Localism Act and that an addition should be made to the Executive Summary to read to this effect.”

- First Resolution – to include the words “and consideration by the Cabinet and Council” at the end.

New Minute No. B31 (Localism Act, 2011):-

- Third Paragraph – insert of (s) at the end of “Person”.
- Fourth Paragraph – to now read “Given the view of the Committee it was suggested that the report as submitted go forward to the Cabinet and Council.”

The Committee also then debated at length how they wished to proceed with the report that would be submitted initially to Cabinet and whether the Committee’s report should go as an appendix to the Monitoring Officer’s report or as a separate item.

B34

RESPONSE TO THE LOCALISM ACT, 2011 - UPDATE

The Chair of the Standards Committee confirmed that she and the Vice-Chair had met the Leader and the Chief Executive. The ideas put forward on behalf of the Committee were well received.

The Leader and Chief Executive recognised the importance of the need for public confidence in the standards regime and that there should be a threshold for dealing with cases given that a number of complaints had been of a trivial nature. Whilst acknowledging this fact, they were of the view that the process by which complaints were considered was one for proper consideration.

The Chief Executive felt the process should be rigorous, have a threshold for sorting serious from less serious complaints and be more streamlined in support of the Council’s objective of cutting bureaucracy and the number of meetings.

The discussion moved to the role of the Monitoring Officer and the concerns expressed by the Committee that one person would bear responsibility for deciding whether a complaint against a member should be investigated, as independent persons would only have an advisory role.

The Chief Executive had explained that the Monitoring Officer’s duty was to ensure that the Council complied with the law and that, when acting in her capacity as monitoring officer, she was totally independent and he had no managerial control over her.

The Leader and Chief Executive appeared supportive of the views of the Committee and were in agreement with three principles:-

- That there would be a Standards Committee.
- That the Standards Committee have an independent element.
- That the independent elements of the Committee would have voting rights.

The Vice-Chair also referred to the three principles above and confirmed that this information was to be forwarded to the Committee via herself by email.

Mr Waller confirmed that he would now be submitting a report on the new standards arrangements to the Cabinet, and in light of the Leader and Chief Executive's wishes would revise the report previously considered by the Committee to include an independent element in the composition of the new standards committee. He advised the Committee that he would be obliged however to inform the Cabinet that any independent members appointed to the new committee would not have voting rights as this would be contrary to law and also that the Chief Executive had advised him that the above principles were agreed subject to any legal qualification.

The Committee expressed concern that independent members would not have voting rights and reiterated the need for the establishment of a sub-committee of independent members to advise the new standards committee in order to protect the reputation of the Council and maintain public confidence that complaints would be dealt with impartially.

Mr Waller reminded the Committee of the provisions of the Localism Act concerned with the appointment of independent persons and the general rule on voting rights, and informed the Committee of a discussion between the legal officers of Barnsley, Doncaster, Rotherham and Sheffield councils in which it had been suggested that each council should appoint one independent person to form a pool of four who could be called upon by each council as required and thereby avoid conflicts of interest.

In view of Mr Waller's advice on the voting rights of independent members, the Committee expressed disappointment at the outcome of the meeting attended by the Chairman and Vice-Chairman.

The Committee gave consideration as to how to progress their concerns on the new standards regime to Cabinet and whether or not to submit their report independently, just the executive summary and recommendations or as an appendix to the Monitoring Officer's report.

Mr Waller advised the Committee that he proposed to append the Committee's report to the Monitoring Officer's report and include references to the Committee's concerns in the body of the report with her comments immediately following.

The Committee decided by majority vote to accept Mr Waller's suggestion that the Monitoring Officer's report, as suggested, should reflect the Committee's comments and that the Committee's report be included as an appendix for information. It was suggested that the Committee have sight of both reports prior to their submission to the Cabinet.

In terms of the outcome of the meeting with the Leader and the Chief Executive, the Committee wished to include the details of this meeting in the Executive Summary.

It was also suggested that an additional meeting, to consider the necessary reports, prior to their submission to Cabinet, be arranged for Thursday, 10th

May, 2012, at 2.00 p.m.

The Committee suggested that the Chairman, on the Committee's behalf, write to the Secretary of State expressing concern at the changes to the independent elements of the new standards arrangements.

Mr Waller circulated a letter from the Department for Communities and Local Government containing an illustrative text for a code of conduct for members and co-opted members of local authorities.

Resolved:- (1) That the information from the Chief Executive be provided to all Members of the Standards Committee once received.

(2) That the report of the Monitoring Officer, with the comments of the Committee included, along with the Committee's appended report, be submitted to this Committee for consideration prior to it being submitted to Cabinet for recommendation to Council for adoption.

(3) That a further meeting of the Committee take place on Thursday, 10th May, 2012 at 2.00 p.m.

From: Gill Musson [g.musson@sheffield.ac.uk]
Sent: 19 April 2012 14:57
To: Bacon, Debbie
Subject: Fwd: Standards Regime

Attachments: image001.gif

Hi Debbie

Below is the response from the Chief Executive regarding the meeting Angela and I had with him 2 weeks ago. Could you please print it off and send a copy to all the members of the Standards Committee asap please.

Thanks
Gill

----- Forwarded message -----

From: ChiefExecutive <ChiefExecutive@rotherham.gov.uk>
Date: 19 April 2012 10:43
Subject: Standards Regime
To: g.musson@sheffield.ac.uk
Cc: Leader <Leader@rotherham.gov.uk>

Dear Dr Musson & Mrs Bingham

Thank you for meeting the Leader and me on Wednesday. We found the discussion both helpful and informative and it has given us both a better understanding of the issues the Council must consider when designing its new standards arrangements.

The discussion was wide ranging and included the proposed enhanced role of the monitoring officer in the new arrangements. I explained the independent nature of the role and the lack of managerial control over the monitoring officer when she is acting in that capacity. We also touched on the problem of trivial complaints, mainly from parish council members, which had blighted the current arrangements and was a catalyst for the government's decision to revoke the requirement for councils to adopt a statutory code of conduct and a statutory standards committee.

We all agreed that it was essential that the public has confidence in the Council's standards arrangements and that the best way of achieving this is by having an independent element comprised of independent members with voting rights. The only caveat to this was that the Council must act within the law. I have since discussed this with the monitoring officer, Jacquie Collins, and Mr Waller, who have advised me that the legislation is drafted in such a way that whilst the Council could co-opt independent members, they could not legally have a vote. We have taken soundings from other Councils regarding their interpretation of the legislation and they do not dissent from the legal advice I have received. It is clear therefore that voting rights for independent members cannot be delivered within the law. However, to honour the spirit of our discussion I have asked the monitoring officer and Mr Waller to prepare a report on the new standards arrangements for consideration by

the Cabinet with the new committee having an independent component in. I understand the report will be submitted to the Standards Committee for information prior to it being considered by Cabinet.

Kind regards

Martin Kimber

Chief Executive



Chief Executive's Office

Chief Executive

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ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	
3.	Title:	Localism Act 2011 and Standards Regime
4.	Directorate:	Resources' Directorate

5. Summary

This report contains details of the changes to the standards regime in consequence of the enactment of Chapter 7 (sections 26 – 37) of the Localism Act 2011; and the options for consideration by the Committee with a view to making recommendations to the full Council.

The report has been considered by the Standards Committee, which in response has prepared the paper attached as Appendix A to this report. The Committee's views are also reproduced in the body of the report in bold italics with the monitoring officer's comments immediately following.

6. Recommendations

Recommendation 1 – the composition of the standards committee:

- a. **That the standards committee be comprised of 7 elected members of the Council and 4 independent members.**
- b. **That the Leader of the Council be requested to consider whether to nominate to the standards committee one or more members who are members of the Cabinet.**
- c. **That the parish councils be invited:**
 - (I) **to indicate whether they wish to delegate their functions in relation to the standards of conduct of their members to the Council and to adopt the Council's code of conduct, and if so**
 - (II) **to nominate a maximum of 3 parish councillors to be co-opted as voting members of the Committee.**

Recommendation 2 – “arrangements” for dealing with standards complaints:

- 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.
- c. That the monitoring officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the standards committee where she feels that it is inappropriate for her to take the decision, and to report quarterly to the standards committee on the discharge of this function.
- d. 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.
- e. 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 the standards committee. Where such local resolution is not appropriate or not possible, she be required to report the investigation findings to a consideration and hearings panel of the standards committee for local hearing.
- f. That the full Council be requested to delegate to consideration and 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 the full Council, or to the parish council, for information;
 - recommending to the full Council publication of the decision that the member had breached the code of conduct;
 - recommending to the full Council formal censure of the member through an appropriate motion;
 - recommending to full Council for recommendation to the member's group leader (or in the case of ungrouped

members, recommend to full Council) 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;
- recommending to the full Council, or to the parish council, the removal of the member from all outside appointments to which he/she has been appointed or nominated by the Council or by the parish council;
- instructing the monitoring officer to, or recommending that the parish council, arrange training for the member.

Recommendation 3 – independent persons:

- a. That the monitoring officer, in consultation with the Leader and Deputy Leader and leader of the Opposition, and with the advice of the Director of Human Resources be authorised to set the initial allowances and expenses for the independent person, and this function subsequently be delegated to the Independent Remuneration Panel having regard to the views of the chair from time to time of the standards committee.
- b. That the monitoring officer be authorised to advertise a vacancy for the appointment of 1 independent person.
- c. That a sub-committee comprising the chair and three other members of the current Standards Committee be set up to short-list and interview candidates, and to make a recommendation to full Council for appointment.

Recommendation 4 – preparation of the registers

- a. That the monitoring officer be instructed to 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 be instructed to ensure that all members are informed of their duty to register interests.
- c. That the monitoring officer be instructed to 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.

- d. That the monitoring officer be instructed to arrange to inform and train parish clerks on the new registration arrangements.

Recommendation 5 – power to grant dispensations

That Council delegate the power to grant dispensations –

- a. on grounds 1 and 4 as set out in this report to the monitoring officer with an appeal to the standards committee; and
- b. on grounds 2, 3 & 5 as set out in this report to the standards committee, after consultation with the independent person.

7. Proposals and details

(1) BACKGROUND

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 1st April 2012, but is now expected to be 1st July 2012.

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

(2) DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

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

(3) STANDARDS COMMITTEE

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will not be a requirement for a statutory standards committee, although the Council has opted to have a voluntary committee as there will still be a need to deal with standards issues and case-work. The new standards committee 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 that only one member of the executive can sit on the standards committee will cease to apply;

The Standard Committee considers that public confidence may be damaged by having a standards committee composed solely of elected members, as the electorate is unlikely to view the committee's decisions as objective and impartial, and that application of the rule on proportionality (which applies to ordinary committees of the Council) may also create the perception that the committee's decisions are open to bias and may threaten public confidence in the objectivity and impartiality of the Council's standards regime. The Committee suggest that the seats on the new standards committee are allocated equally between the majority group and opposition group.

The rules on proportionality are prescribed and require the Council to allocate the majority of the seats on its ordinary committees to the majority group. The remaining seats are allocated to each opposition group in proportion to the total of all the seats on the ordinary committees of the Council as is borne by the number of members of the group to the membership of the Council.

The Council may however approve different arrangements if no member of the Council votes against them, and this has been the practice to date. It would therefore be possible to allocate half the seats on the Committee to the majority group and half to the opposition group providing no member of the Council objected to the arrangement. This would signal that the Committee is non partisan.

- the current co-opted independent members will cease to hold office. The Act establishes a new category of independent persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as independent persons for 5 years*. The new independent persons may be invited to attend meetings of the standards committee, and could be co-opted on to the committee but would not have voting rights;

The Standards Committee considers that it is imperative that there is an independent membership of the new standards committee in order to generate public confidence and that it is inappropriate and “unfair” to expect elected members to judge their peers without independent support.

The Council could co-opt one or more independent members onto the Committee but these would not have voting rights. Having discussed this issue with the Chair and Vice-Chair of the Standards Committee, the Leader supports the proposition that the new standards committee should have a number of independent members.

**The government has indicated that it is minded to make transitional provisions to enable an independent member to be appointed as an independent person during the first year in which the new standards regime takes effect (see letter dated 23 February 2012 from the Right Hon Bob Neill MP at Appendix B).*

- the Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of parish councils, but the current parish council representatives will cease to hold office. The Council can choose whether it wants 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 Council, with co-opted but non-voting parish council representatives (which could then only make recommendations in respect of parish council members), or establishing 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).

(4) THE CODE OF CONDUCT

A report on the requirements of the new code of conduct was presented to the Cabinet on 25 April, which resolved to recommend to the full Council on 18 May the re-adoption, on the coming into force of the standards provisions in the Localism Act, (subject to any transitional period), of the current *Code of Conduct for Members and Co-opted Members*, as revised by the monitoring officer, in consultation with the Leader and Deputy, to reflect the mandatory requirements of the Act.

Members will recall that the composition of the new code is largely a matter for the Council and that the only mandatory provisions are a requirement that the code is when viewed as a whole consistent with the seven principles of public life (the Nolan Committee principles) and contains appropriate provisions for the registration of pecuniary and non-pecuniary interests.

There will be a requirement to register “disclosable pecuniary interests” (“DPs”) (see below) which will be defined in regulations yet to be issued by the Secretary of State. DPs are expected to be akin to the current prejudicial interests.

A member who has a DPI in an item of business will commit a criminal offence by failing to disclose it and taking part in the discussion and voting on that item. There will not however be a requirement to leave the room while the item is discussed. Consequently, one of the recommendations to the full Council is the amendment of standing order 28 to the effect that a member with a DPI must leave the room unless a special dispensation has been granted.

(5) DEALING WITH MISCONDUCT COMPLAINTS

“Arrangements”

The Act requires that the Council adopts “arrangements” for dealing with complaints of breach of the code of conduct both by members of the Council and by parish council members. Complaints can only be dealt with in accordance with such “arrangements”. Therefore 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.

The advantage is that the Act repeals the requirements for separate assessment, review and consideration and hearing panels referrals. The Council can establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the standards committee or monitoring officer special powers to deal with complaints, the Council will need to delegate appropriate powers to the standards committee and to the monitoring officer.

The Standards Committee is particularly concerned that public confidence in the handling of complaints and the promotion of standards may be damaged as a result of the changes made by the Localism Act, and that the electorate

may perceive the new arrangements as a device to enable members to police themselves.

The Committee also consider that the potential for the monitoring officer and the independent person's views on the treatment of a complaint to differ would put the standards committee in that very position. The Committee is also concerned about the lack of sanctions for breach of the code of conduct.

The government has indicated that it is minded to make transitional provisions to enable an independent member to be appointed as an independent person during the first year in which the new standards regime takes effect (see letter dated 23 February 2012 from the Right Hon Bob Neill MP at Appendix B).

Decision whether to investigate a complaint

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 may be advantageous to take advantage of the new flexibility to delegate to the monitoring officer the initial decision on whether a complaint requires investigation, subject to consultation with the independent person(s) and the ability to refer particular complaints to the standards committee where she feels that it would be inappropriate for her to take a decision on it, for example where she has previously advised the member on the matter or the complaint is particularly sensitive. The new arrangements would 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 she should be accountable for its discharge. For this purpose, it would be appropriate that she reports quarterly to the standards committee, which would enable her 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.

The Standards Committee considers that the new arrangements place inappropriate levels of responsibility on the monitoring officer, particularly as the independent person's role is only advisory. The Committee also considers that it is inappropriate for a council officer to be expected to handle and make judgments on complaints alleging misconduct by members and that this would be "unfair" and even unethical. The Committee considers that work of this nature should be handled by a committee.

The Committee further considers that there is a lack of direction in the Act to address the situation where the monitoring officer and the independent person have differing views on the treatment of a complaint. And that the provision whereby a member who is the subject of an allegation may consult the independent person is "unacceptable and unethical and would "compromise their independence, objectivity and credibility".

Other councils are advocating the filtering of complaints of allegations of misconduct by the monitoring officer. It is also an option for the standards committee to filter complaints, perhaps through a sub-committee of the committee.

The Council must consult and take into account the views of the independent person before the decision is made following the investigation of an allegation of misconduct, and may consult him/her in other circumstances.

“No Breach of Code” finding on investigation

Copies of all investigation reports could be provided to the independent person to enable him/her to get an overview of current issues and pressures.

“Breach of Code” finding on investigation

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 consideration and 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.

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 consideration and hearings panel constituted as a sub-committee of the standards committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the consideration and hearing 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 consideration and hearing panel finding of failure to comply with the code of conduct

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 to members. So, where a failure to comply with the code of conduct is found, the range of actions which the Council can take in respect of the member is limited and must be directed to securing the continuing ability of the Council 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 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 recommending that the parish council, arrange training for the member;
- removing, or recommending 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 recommending to the Parish Council that it withdraws, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- excluding, or recommending that the parish council exclude, the member from the parish council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.

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 consideration and hearing panels as a joint committee and joint sub-committees with the parish councils, and seek the delegation of powers from parish council to the consideration and hearing panels, so that they can effectively take decisions on action on behalf of the particular parish council.

(7) APPEALS

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

(8) INDEPENDENT PERSON(S)

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

"Independence"

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

A person is considered not to be "independent" if –

- he/she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council or of any of the parish councils within its area;
- he/she is, or has been within the last 5 years, an elected or co-opted member of any committee or sub-committee of the Council or of any of the parish councils within its area (which would preclude any of the current co-opted independent members of the Committee from being appointed as an independent person*); or
- he/she is a relative or close friend of a current elected or co-opted member or officer of the Council or any parish council within its area, or of any elected or cop-opted member of any committee or sub-committee of the Council or parish council.

**The government has indicated that it is minded to make transitional provisions to enable an independent member to be appointed as an independent person during the first year in which the new standards regime takes effect (see letter dated 23 February 2012 from the Right Hon Bob Neill MP at Appendix B).*

For this purpose, “relative” comprises –

- the candidate’s spouse or civil partner;
- any person with whom the candidate is living as if they are spouses or civil partners;
- the candidate’s grandparent;
- any person who is a lineal descendent of the candidate’s grandparent;
- a parent, brother, sister or child of anyone in the first or second bullet point;
- the spouse or civil partner of anyone in the third, fourth or fifth bullet points; or
- any person living with a person in the fourth, fifth or sixth bullet points as if they were spouse or civil partner to that person.

Functions of the Independent Person

The functions of the independent person(s) are as follows –

- He/she must be consulted by the Council 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).

- He/she may be consulted by the Council in respect of a standards complaint at any other stage.
- He/she may be consulted by a member or co-opted member of the Council or of a parish council against whom a complaint has been made.

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?

The Act gives discretion to appoint one or more independent persons. However, 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.

It has been suggested that the four sub-regional metropolitan district councils, Barnsley, Doncaster, Rotherham and Sheffield each appoint one independent person who would form a pool of reserve independent persons that each council could call upon from time to time and thereby avoid conflicts of interest.

Remuneration

As the independent person is not a member of the Council or of its committees or sub-committees, the remuneration of the independent person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current chair of the Standards Committee, the role of independent person is likely to be less onerous. He/she may be invited to attend all meetings of the standards committee and consideration 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). 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 should 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 the remuneration.

The Standards Committee considers that the independent person's remuneration should be set by the Independent Remuneration Panel having regard to the views of the chair of the Standards Committee.

The Committee suggests that the independent person should report quarterly to the standards committee.

(9) THE REGISTER OF MEMBERS' INTERESTS

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 Council’s offices and on the Council’s website.

At present we do not know what DPIs will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member’s own interests, but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity.

The provisions of the Act in respect of the code of conduct require the Council’s Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

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 Council’s offices and on the 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

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.

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.

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.

The preparation and operation of the register, not just for the Council 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 Council to recover any costs from parish councils.

Disclosure of Interests and Withdrawal from Meetings

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

The duty to disclose arises whenever a member is present at a meeting of the Council, a committee or sub-committee, or a Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting that has not been previously registered or notified to the monitoring officer.

In these cases 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”).

Where the member does make a disclosure of an unregistered or non-pending DPI during a meeting, 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.

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.

Failure to comply with these requirements becomes a criminal offence, rather than leading to sanctions.

The Council’s Code of Conduct must make “appropriate” provisions for disclosure of pecuniary interests and interests other than pecuniary interests, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.

The Cabinet has recommended to the full Council an amendment to standing order 28 to the effect that a member with a DPI must withdraw from the meeting room, including from the public gallery, while the item of business in which he/she has a DPI is being considered and voted on, except where he/she has been 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

Matters can be decided by Cabinet members acting alone under delegated powers.

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 to 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.

Sensitive Interests

The Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests.

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

If the monitoring officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the monitoring officer can exclude the detail of the interest from the published version of the register of members' interests.

Dispensations

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

At present, a member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds –

- that at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of the Standards Committee); and
- that so many members of one political party have prejudicial interests in the matter that it would upset the result of the vote

on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

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

- that so many members of the decision-making body have DPs 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 (Ground 1);
- that, without the dispensation, the representation of different political groups on the decision-making body 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 (Ground 2);
- that the decision-making body considers that the dispensation is in the interests of persons living in the Council’s area (Ground 3);
- that, without a dispensation, no member of the Cabinet would be able to participate in discussion of the item (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) (Ground 4); or
- that the authority considers that it is otherwise appropriate to grant a dispensation (Ground 5).

Any grant of a dispensation must specify the dispensation period, which can be up to a maximum of 4 years.

The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Localism Act gives discretion for this power to be delegated to a standards committee or a sub-committee, or to the monitoring officer. Grounds 1 and 4 are essentially 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 the standards committee.

8. Finance

There will be some costs associated with the transition from the current arrangement to the new arrangements including the costs of advertising and appointing independent persons.

9 Risks and Uncertainties

It is expected that the new arrangements will take effect from 1 July 2012. Consequently, in order to comply with the Council's obligations under the 2011 Act, it will be necessary to have a code of conduct and the democratic machinery in place to avoid breach of the Act.

10 Policy and Performance Agenda Implications

Having a standards committee and code of conduct for members and co-opted members supports the objective of being an effective council and is a component of good governance.

11 Background Papers and Consultation

Localism Act 2011

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APPENDIX A

**RMBC Standards Committee Response to the Localism Act
2011.**

March 2012

RMBC Standards Committee Response to Localism Act 2011

Executive Summary

Please note that the term “independent” is used within this document in its general sense, and should not be read as referring to Independent Members of the current Standards Committee.

1. The current Standards Committee has concerns about a number of areas of the Localism Act, finding the Act to be ill-conceived and poorly drafted. These areas of concern are identified in the accompanying report, along with the rationale supporting them.
2. Whilst a number of these areas are rendered rigid and inflexible by the legislation there are others that are more flexible, and offer an opportunity for alternative applications. These areas of concern and the alternative applications they offer are as follows:
 - a) The Act requires that only Elected Members of the Council can be voting members of the Standards Committee, and these Elected Members are to be appointed proportionally. It would seem unfair to expect members to judge complaints against their peers, and this arrangement may have a detrimental effect on public confidence in the impartiality and objectivity of the local standards regime. **The legislations does allow for Councils to delegate decisions on complaints** e.g. to form a separate sub-committee which could fulfil this role, or to form a separate committee under a different name and with a more balanced membership. These options could also offer an opportunity for the Standards Committee to widen its remit.
 - b) The Act places what the Standards Committee considers to be an inappropriate responsibility on the Monitoring Officer, as an officer of the Council, to consider complaints against Members. Having an Independent (Sub) Committee to consider such complaints would guard against this.
 - c) The role of the **Independent Person** is defined by the Act, and allows no flexibility. The role as outlined lacks credibility and is rendered ineffective because it is entirely advisory and lacks accountability. It is important for public confidence that the remuneration for this post is set at a prudent and thus publicly acceptable level.
3. The aim of the current Standards Committee is to ensure that, as far as is possible within the terms of the Localism Act, the RMBC standards regime operates effectively, generates public confidence and continues to be an example of good practice that best serves RMBC, its Members, Officers and Parish Councils, and last but not least the people of Rotherham. As a result it makes the following recommendations;

Recommendations for Consideration by RMBC

In Respect of the Composition of the Standards Committee, Public Confidence and the Handling of Complaints.

That, in the interest of fairness and of generating public confidence;

1. *Elected Members should **not** be appointed proportionally to the Standards Committee but rather that 50% of members be drawn from the dominant political party and 50% from other parties.*
2. *An **Independent** Sub Committee of the Standards Committee be formed to:*
 - *Be first point of call to consider and recommend resolution of complaints for approval by the Standards Committee.*
 - *Act as Impartial Mentor/Supporter for any officer invoking the Whistleblowing procedure.*
 - *Carry out further duties as deemed appropriate by the Standards Committee.*

In Respect of the Role of Independent Person

That, in order to maintain public confidence:

- *The post should be remunerated.*
- *Any remuneration for the Independent Person should be set at a prudent and realistic level by the Independent Remuneration Committee and Chair of the Standards Committee, and should be within the limits of allowances currently paid to Independent Standards Committee Members.*
- *The Independent Person should report as necessary/appropriate to the Standards Committee on the discharge of his/her functions.*

A meeting took place on 11th April 2012 between Councillor R. Stone (Leader RMBC), Mr. Martin Kimber (Chief Executive RMBC), Mrs. Angela Bingham (Chair RMBC Standards Committee) and Dr. Gill Musson (Vice-Chair RMBC Standards Committee), when the issues outlined in this document were discussed. At the conclusion of the meeting assurances were given by the Leader and the Chief Executive that:

RMBC would have a Standards Committee.

That the Standards Committee would include an Independent element.

That the Independent element of the Standards Committee would have voting rights.

Introduction

RMBC has had a Standards Committee for a number of years, and before this was a mandatory requirement. Members have always aimed to fulfil their remit in a professional, fair and objective manner, with this objectivity being enhanced by the Committee's independent element. RMBC has never sought to weaken that independence, recognizing its importance in generating and maintaining public confidence in its standards regime.

Members of the Standards Committee believe it is incumbent on them to support RMBC in promoting the highest possible standards amongst its members. At this time, when government, via the Localism Act, is seeking to change the current standards regime, the Committee would be failing in its duty were it not to review the new regulations and offer to RMBC its considered response to them.

The Committee has concerns about the Act itself, finding it to be ill conceived and poorly drafted with a number of areas of weakness within it. These include; the composition of the Standards Committee; proportionality; the lack of sanctions for transgression; the situation in respect of Parish Councils; the role of the Independent Person; the responsibilities of the Monitoring Officer and the ability to generate and maintain public confidence in the local standards regime. The legal requirements of the Act render some of these areas rigid and inflexible, however in others there is the opportunity to consider alternative applications of the Act. The following response is based on the Committee's knowledge and practical experience of applying the Code of Conduct, and is intended to offer alternative applications of the Localism Act, and to explain the rationale behind them.

Composition of the Standards Committee

Currently Independent Members are in the majority on RMBC Standards Committee which has an Independent Chair and Vice-Chair. Within the terms of the Localism Act the Standards Committee will be a 'normal' committee of the Council, composed entirely of Elected Members. An Independent Person is to be appointed who will not have voting rights, but will offer advice to the Monitoring Officer, and, in the event of a complaint being received, will be available for consultation by both the Council and subject of the complaint.

To task a committee of Elected Members with hearing complaints against their fellow members is, the Committee believes, to place them in a very difficult position, which is unlikely to be perceived by the electorate as generating objective and impartial decisions. This perception is further bolstered by the fact that the Act determines that Elected Members should be appointed proportionally to the Standards Committee. The political make-up of the Committee may be perceived as leaving its decisions open to bias, and may threaten public confidence in the objectivity and impartiality of RMBC's standards regime. The knowledge and practical experience of existing Standards Committee members will be lost when, particularly at this time of transition, it could prove extremely valuable.

The present regime has worked well at a local level with its combination of Elected, Independent and Parish Council members. This balance of membership is considered crucial in generating public confidence and facilitating effective functioning. The Committee maintains that it is inappropriate and unfair to expect Elected Members to judge their peers without independent support. Indeed most, if not all, professional bodies have lay members on those committees and panels that are called to make judgements on members, and this is widely accepted as an example of good practice. Consequently the Independent element should, at least, equal the Elected element of the Standards Committee.

There is no restriction, within the Act, to prevent the new standards committee having co-opted independent support, or an independent sub-committee. This group could act in an advisory

capacity and perhaps be tasked with considering complaints where the view of the Monitoring Officer and the Independent Person differ. This would also provide an opportunity for the Committee to broaden its remit. The Localism Act allows for the Council to “establish its own arrangements which can include delegation of decisions on complaints” and the non-specific nature of this statement does not rule out delegation to an independent sub-committee.

A further alternative may be to replace the Standards Committee with a committee under another name e.g. Ethical Policy Committee, that would have a wider remit, and more balanced membership.

Widening of Remit of Standards Committee

The remit of the current Standards Committee extends far beyond the consideration of complaints and includes, for example, oversight of Council policies and analysis of Ethical Awareness Surveys of Elected Members, Officers, and Parish Councillors. The survey results were disseminated by a Working Group of the Standards Committee and this group identified a need for an Independent Mentor/Supporter to support any officer invoking the Whistleblowing procedure. This role would sit well within the remit of an independent cohort of the Standards Committee, and would extend the work and influence of the Committee.

Public Confidence/Handling of Complaints

The Standards Committee is particularly concerned that the changes demanded by the Localism Act may potentially affect public confidence in the process of handling complaints, and the promotion of standards. Professions that historically self-regulated now incorporate independent members, a move driven by the need to gain and maintain public confidence.

By reversing their current system RMBC would not only be out of line with current professional practice, but could also be perceived, by the electorate, as creating the means for Elected Members to ‘police’ themselves. Equally the potential for the opinions of the Independent Person and the Monitoring Officer to differ would be ever present, placing Elected Members of the Standards Committee in this very position. There is an alternative application of the Act that would allow this task to be delegated as discussed in the section “Composition of the Standards Committee”.

The Act advocates increased use of the criminal justice system for transgressions of the Code of Conduct. However, it does not clarify the process for reporting to the police instances where a Declared Pecuniary Interest is not registered or mandated.

The lack of sanctions available to the Standards Committee would seem to close the opportunity, currently afforded, to respond to identified gaps in members’ knowledge, and to invoke training where the need is identified, and could also give rise to a public perception of an ineffective system.

The Role of the Independent Person and the Monitoring Officer

The Standards Committee considers that the terms of the Localism Act place inappropriate levels of responsibility on the Monitoring Officer. The responsibility for decisions on complaints is delegated to the Monitoring Officer and relies predominantly on the thoughts and opinions of that person, with ‘advice’ from one other, (ie the Independent Person), who has no voting rights and thus no power. The Committee maintains that it is inappropriate for an officer of the Council to be expected to handle, and make judgements on, complaints against Elected Members who could be construed as their employer, and that this would be unfair and even unethical. The Standards Committee believes that advice/decisions of this nature should be made by a committee.

The appointment of an Independent Person is a requirement of the Act, however the role is ambiguous whilst the terms of the legislation render it ineffective. The Independent Person, along with the Monitoring Officer, decides whether complaints should be investigated, however this person has no voting rights and consequently no power. There will almost certainly be cases where the views of the Monitoring Officer differ from those of the Independent Person, and there is a lack of direction within the Act for resolving his situation. The provision it makes for the Independent Person to be consulted by both the Council and subject member of a complaint is considered to be unacceptable, unethical and to compromise their independence, objectivity and credibility. Despite being a legal requirement this role would seem to have little standing or value under the terms of the Act.

Provision is made within the legislation for remuneration for the Independent Person. To ensure that this is set at a realistic, prudent and publicly acceptable level the Standards Committee proposes that it should be set by the Independent Remuneration Committee, with input from the Chair of the Standards Committee. The Committee believes this to be crucial to maintaining public confidence in the good stewardship of RMBC.

It would be appropriate for the Independent Person to report as necessary/appropriate to the Standards Committee on the discharge of his/her functions.

Conclusion

The Standards Committee has given very careful consideration to the requirements of the Localism Act 2011, and their implications for RMBC. The views expressed within this report represent those voiced by members of the Committee during their deliberations, and supplied to the Chair for the purpose of constructing this document. The Act itself is ill-conceived and poorly drafted, and presents many potential difficulties in its practical application.

The Standards Committee members believe it to be incumbent on them to utilise their skills, knowledge, and the standards experience they have gained to offer to RMBC their considered opinion of the most practical and effective way to interpret and implement the new legislation. Whilst there are many areas of the Act that cause concern some of these are rendered rigid and inflexible by the terms of the legislation. There are others that offer alternative applications of the Act, and it is these areas that form the subject of this report, and are offered for consideration. The ultimate aim of the Standards Committee is to ensure that, as far as is possible within the terms of the Localism Act, the RMBC standards regime operates effectively, generates public confidence and continues to be an example of good practice that best serves RMBC, its members, officers, and Parish Councils, and equally importantly the people of Rotherham.



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Our Ref: ER/BN/002872/12

23 FEB 2012

LOCALISM ACT: NEW STANDARDS ARRANGEMENTS

Thank you for your letter of 25 January to the Rt Hon Eric Pickles MP, Secretary of State for Communities and Local Government on behalf of your constituent, [redacted] of [redacted] who is a member of Bradford Metropolitan District Council's Standards Committee. [redacted] is concerned about the exclusion, under the Localism Act, of certain people from being appointed as the independent person under the new standards arrangements. She is also concerned about the composition of standards committees under the new arrangements and the fact that co-opted members will no longer have a vote.

The exclusion of existing members of standards committees from being appointed as an Independent Person was put in place to provide a clear break with the old Standards Board regime, and ensures that no person who is an independent member or chair of a council's statutory standards committee can be appointed as the Localism Act's independent person while they continue to be a member of that committee.

The Department received a number of representations from councils about this matter, and after careful consideration, Ministers are minded that transitional provision should be made allowing a council to appoint a person as an independent person who, although not a member or chairman of a standards committee at the time of appointment (or thereafter), has held such a post within the last five years. This transitional provision would apply for the first year of the new arrangements, and any person appointed under the transitional provisions would be able to continue to hold office after the transitional period, for whatever term the council saw fit.

However, the Government has no plans to allow a relative or close friend of members, co-opted members or of an officer of a parish council within the council's area to be appointed as an independent person. Similarly, it has no plans to give co-opted members of non-statutory standards committees a vote, or to exclude them from the political balance rules.

BOB NEILL MP

ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	25 April 2012
3.	Title:	Localism Act 2011 and Code of Conduct for Members and Co-opted Members
4.	Directorate:	Resources

5. Summary

The current standards regime is set to end on 30 June 2012 and the following day the new standards regime under the Localism Act 2011 implemented. The Act sweeps away the current statutory provisions under the 2000 Local Government Act, including a requirement to have a statutory standards committee and a code of conduct based on a statutory model.

There will still however be a statutory duty to promote and maintain high standards of conduct by members and co-opted members and in discharging that duty the Council must adopt a code of conduct setting out what is expected of members when they are acting in that capacity.

It is largely for the Council to determine the composition of its new code of conduct with the only mandatory requirements being that it complies with the seven principles of public life (the Nolan Committee principles; see Appendix 1) and contains appropriate provisions for the registration of pecuniary and non-pecuniary interests. Disclosable pecuniary interests ("DPIs") are a key change which will be detailed in regulations issued by the Secretary of State. Members will be required to register DPIs and not take part in any discussion or vote on an item in which they have a DPI.

A member who has a DPI in an item of business will commit a criminal offence by failing to disclose it and taking part in the discussion and voting on that item. There will however not be a requirement to leave the room while the item is discussed. Consequently, it is recommended that the Council's Standing Orders be revised to include such a requirement.

There has been some delay in implementing the provisions of the 2011 Act that apply to standards and, in particular, the regulations defining what will constitute DPIs have not yet been published. Consequently, as the government's stated intention is to bring the new standards regime into force on 1 July, it is suggested that to avoid the possibility of the Council not having a code in place (the government may give a period of grace but this is not certain) the Cabinet recommend to full Council the re-adoption on the implementation date of the new standards regime the current *Code of Conduct for Members and Co-opted Members* as revised by the monitoring officer, in consultation with the Leader and Deputy Leader, to reflect the mandatory requirements of the 2011 Act in relation to standards.

The monitoring officer could thereafter review the revised Code and prepare a report and draft code for consideration by the Cabinet with a view to recommending the adoption of the code by the full Council.

6. Recommendations

That Cabinet

It is recommended that:

- a. the Cabinet recommend to full Council that, subject to any transitional period in relation to the new standards provisions, on the coming into force of the relevant provisions of Chapter 7 (standards) of the Localism Act 2011 the Council re-adopt the current *Code of Conduct for Members and Co-opted Members* as revised by the monitoring officer, in consultation with the Leader and Deputy Leader, to reflect the mandatory requirements of the Act;**
- b. the monitoring officer be instructed subsequently to review the revised Code and prepare and present to the Cabinet a draft code of conduct for recommending for adoption by the full Council.**
- c. the draft code should 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;**
- d. when the Disclosable Pecuniary Interests Regulations are published, the monitoring officer, in consultation with the Leader and Deputy Leader, add to the draft code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs; and**
- e. the Cabinet recommend to full Council that a new sub-paragraph (4) should be inserted in standing order 28 (4) in the terms set out in this report and that sub-paragraphs (4) and (5) of standing order 28 be renumbered (5) and (6) respectively.**

7. Proposals and details

Background

The Code of Conduct

The current ten General Principles and statutory model code of conduct (see Appendix 2) will shortly be repealed, and members will no longer have to give an undertaking to comply with the *Code of Conduct for Members and Co-opted Members*. However, the Council will be required to adopt a new code of conduct governing elected and co-opted members' conduct when acting as members. The Council's new code of conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

The Council has discretion as to what it includes within its new code of conduct, provided that it is consistent with these 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. 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 Council's new code of conduct will therefore 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 practise, the easiest course of action would be simply to re-adopt paragraphs 3 to 7 of the existing Code of Conduct. 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.

There are a number of model draft codes of conduct currently circulating but as the regulations have not yet been published, it is not yet possible to draft code provisions which reflect the definition of DPIs. It is however possible to give an indicative view of what the Council might consider appropriate to include in the code in respect of

the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests.

The Council has the option of revising its existing *Code of Conduct for Members and Co-opted Members* rather than adopting a completely new code, and it is suggested that this is done, at least in the short term, so that a more considered view can be taken as the position becomes clearer.

The Act prohibits members with a DPI from participating in council business, although it does not prohibit them from remaining in the room providing they take no part in the discussion on that item and do not vote. It is suggested however, that the Council amend standing order 28 (declarations of interest) by requiring a member with a DPI to withdraw from the meeting room including the public gallery whilst that item of business is considered. Standing order 28 might be amended by inserting a new sub-paragraph (4) as follows:

“28 (4) A member with a disclosable pecuniary interest in an item of business must not take part in the discussion or vote on that item and must withdraw from the meeting room including the public gallery before the item is considered by the meeting”.

8. Finance

There are no significant financial implications.

9 Risks and Uncertainties

Failure to have a code in place that meets the requirements of Chapter 7 (standards) of the Localism Act 2011 may put the Council in breach of its obligations under section 27 (duty to promote and maintain high standards of conduct) of the Localism Act 2011.

10 Policy and Performance Agenda Implications

None

11 Background Papers and Consultation

Localism Act 2011

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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.

ROTHERHAM METROPOLITAN BOROUGH COUNCIL
CODE OF CONDUCT FOR MEMBERS AND
CO-OPTED MEMBERS

PART 1

GENERAL PROVISIONS

Introduction and Interpretation

Scope

General Obligations

PART 2

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ROTHERHAM BOROUGH COUNCIL

CODE OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS

PART 1

General Provisions

Introduction and interpretation

1. (1) This Code applies to **you** as a member of Rotherham Borough Council ("the Council").
- (2) You should read this Code together with the general principles prescribed by the Secretary of State, which are set out at Annex 1 to this Code.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:-

"meeting" means any meeting of—

- (a) the Council;
- (b) the executive of the Council;
- (c) any of the Council'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 of the Council.

Scope

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:-
 - (a) conduct the business of the Council (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 the Council,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.

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- (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 the Council:-
 - (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 this Code, 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 the Council to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006 and set out in Annex 2 hereto);
 - (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 this Code or any other relevant authority's code of conduct for members; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

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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 Council; 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 the Council 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 the Council:-
 - (i) act in accordance with the Council'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 the Council's:-
 - (a) chief finance officer (the Strategic Director of Finance); or

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- (b) monitoring officer (the Assistant Chief Executive (Legal and Democratic Services)),

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 the Council.

PART 2

Interests

Personal interests

8. (1) You have a personal interest in any business of the Council 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 the Council;

(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),

(dd) which is a private club or society, such as the Freemasons, a recreational club, working men's club or private investment club,

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 the Council, 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 the Council'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);

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- (vii) any contract for goods, services or works made between the Council 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 the Council's area in which you have a beneficial interest;
 - (x) any land where the landlord is the Council and you are, 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) is, the tenant;
 - (xi) any land in the Council'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 (see paragraph 8 (2) for definition of "relevant person") to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

(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 the Council and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the

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commencement of that consideration, or when the interest becomes apparent.

- (2) Where you have a personal interest in any business of the Council 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) (i.e. a gift or hospitality of at least £25), 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 the Council'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 the Council 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 the Council 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

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- (c) relates to the functions of the Council in respect of:-
 - (i) housing, where you are a tenant of the Council 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 the Council (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 the Council's executive or another of the Council'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 the Council:-
- (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;

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- (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 the Council'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 the Council, you may attend a meeting (including a meeting of the overview and scrutiny committee of the Council 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.

PART 3

Registration of Members' Interests

Registration of Members' Interests

13. (1) Subject to paragraph 14, you must, within 28 days of:-
- (a) this Code being adopted by the Council; or
 - (b) your election or appointment to office (where that is later),
- register in the Council'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 the Council'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 the Council's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information (as defined by paragraph 14 (3)), and the Council'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 the Council's monitoring officer asking that the information be included in the Council'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.

ANNEX 1

The Ten General Principles

Paragraph 1 (2)

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

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Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

ANNEX 2

The Equality Enactments

Paragraph 3 (2) (a)

The equality enactments are defined in the Equality Act 2006 as: -

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976 race
- the Disability Discrimination Act 1995
- Part 2 of the Equality Act 2006 (discrimination on grounds of religion or belief)
- Regulations under Part 3 of the 2006 Act (discrimination on grounds of sexual orientation)
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Age) Regulations 2006

Resources Directorate

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Date: 3 May 2012

Dear Parish Clerk

New Standards Arrangements under the Localism Act

This circular letter concerns the changes to the standard regime that will apply when the provisions of the Act in relation to standards come into force, which is expected to be on 1 July. From that date parish councils will be responsible for making their own arrangements to discharge the duty placed upon them and other councils under the Act to promote and maintain high standards of conduct by their members and co-opted members. In consequence, Rotherham's present statutory standards committee will cease to exist.

Standards Committee

However, although it will no longer be a legal requirement to have a standards committee, Rotherham has resolved to have a voluntary standards committee and one of the purposes of this letter is to seek the views of parish councils in Rotherham's area as to whether they would wish to join other interested parish councils in nominating an appropriate number of representatives to sit as partner members of a joint Rotherham Borough Council standards committee. Parish council representatives would have a vote on the committee.

I understand that the Yorkshire Local Councils Associations and the National Association of Local Councils have been working with member parish councils to help prepare them for the new arrangements and would be willing to arrange for a ballot of nominated representatives to select a designated number (Rotherham's Standards Committee currently has three seats for parish representatives) to represent all of the participating parish councils on the joint committee.

Delegation

Should the parish council wish to delegate its functions in relation to standards to Rotherham, it would need to pass a resolution in the following terms:

"Resolved that –

- (a) the functions of the council under Chapter 7 (standards) of the Localism Act 2011 be delegated to Rotherham Borough Council; and
- (b) Cllr [specify] be nominated as the council's nominee for the ballot of nominated representatives arranged by the Yorkshire Local Councils Associations to select the parish councils' representatives to sit as members of Rotherham Borough Council's joint standards committee".

Code of Conduct

Like other councils, Rotherham is currently reviewing its *Code of Conduct for Members and Co-opted Members*. The Localism Act requires parish councils to adopt a code of conduct which when viewed as a whole is consistent with the seven principles of public life (the Nolan Committee principles) and which contains appropriate provisions for the registration of pecuniary and non-pecuniary interests. The Act does not prescribe categories of pecuniary and non-pecuniary interests, so councils are free to decide for themselves what these should be.

There are a number of template codes of conduct currently circulating and Rotherham has not yet taken a view on the code of conduct it will adopt. It is expected however that Rotherham's new code will be based at least in part upon the current statutory model code as well as incorporating any mandatory requirements of the Localism Act, such as the requirement to register "disclosable pecuniary interests" ("DPIs"). Once the regulations on DPIs have been published it should be possible to progress this work. In the meantime, Rotherham's Cabinet has recommended that Rotherham's current *Code of Conduct for Members and Co-opted Members* should be re-adopted on the coming into force of the standards provisions in the Act (subject to any transitional period) as revised by the monitoring officer, in consultation with the Leader and Deputy Leader, to reflect the mandatory requirements of the Act.

The second purpose of this letter is to ascertain whether parish councils will be adopting their own codes or would prefer to adopt the code formulated by Rotherham, which would have the advantage of consistency. Should any parish councils wish to follow this course, the monitoring officer will arrange to consult with them when drafting of the code.

I would be grateful if you would put this letter before your members and let me have the parish council's views.

Yours sincerely,

for Jacqueline Collins
Director, Legal and Democratic Services