

## ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS

1.	<b>Meeting:</b>	<b>Standards Committee</b>
2.	<b>Date:</b>	<b>8<sup>th</sup> March, 2012</b>
3.	<b>Title:</b>	<b>Localism Act, 2011</b>
4.	<b>Directorate:</b>	<b>Resources' Directorate</b>

### 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 Cabinet and the full Council.

### 6. Recommendations

#### Recommendation 1 –

- a. That the Standards Committee comprises 8 elected members of the Council, appointed proportionally;
- 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 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; or
  - (III) to indicate whether they wish to make their own arrangements in relation to the standards of conduct of their members and the code of conduct in relation to their members, and if so
  - (IV) to nominate a maximum of 3 parish councillors to be co-opted as non-voting members of the Council's Standards Committee.

## **Recommendation 2 -**

- a. That the monitoring officer be instructed to prepare and present to the Standards Committee a draft code of conduct for recommending to the Cabinet for adoption by the full Council. That the draft code should –**
  - (i) equate to paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its committees and sub-committees; and**
  - (ii) require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.**
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the monitoring officer, after consultation with the Chair of Standards Committee, add to that draft code provisions which he considers to be appropriate for the registration and disclosure of interests other than DPIs.**

## **Recommendation 3A**

**That the monitoring officer be instructed to prepare and submit to the Committee for recommending to the Cabinet for approval by the full Council “arrangements” as follows -**

- a. that the monitoring officer be appointed as the proper officer to receive complaints of failure to comply with the code of conduct;**
- b. that the monitoring officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation.**
- c. that the monitoring officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to 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, he/she is to report the**

**investigation findings to a consideration and hearings panel of the Standards Committee for local hearing;**

- f. that Council 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 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 3B**

**That a meeting be arranged between the Chair and Vice-Chair of Standards Committee and the group leaders for the Council and representatives of parish councils to discuss how the new system can best operate.**

## **7. Proposals and details**

### **Background**

#### **The Localism Act 2011**

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1<sup>st</sup> April 2012, but is now expected to be 1<sup>st</sup> July 2012.

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

#### **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.

#### **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 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, but are unlikely to be co-opted onto the Committee;
- 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).

## **Issue 1 – The composition of the Standards Committee.**

### **Recommendation 1 –**

- a. That the Standards Committee comprises 8 elected members of the Council, appointed proportionally;**
- 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;**
- d. 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 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; or**
  - (III) to indicate whether they wish to make their own arrangements in relation to the standards of conduct of their members and the code of conduct in relation to their members, and if so**
  - (IV) to nominate a maximum of 3 parish councillors to be co-opted as non-voting members of the Council’s Standards Committee.**

### **The Code of Conduct**

The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new code of conduct governing elected and co-opted member’s conduct when acting in that capacity. The Council’s new code of conduct must, viewed as a whole, be consistent with the following seven principles –

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

The Council has discretion as to what it includes within its new code of conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it might

be worthwhile at this stage in instructing the monitoring officer to prepare a draft code which requires registration and disclosure of those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

The Act prohibits members with a DPI from participating in council business, and the Council can adopt a standing order requiring members to withdraw from the meeting room.

So the Council's new code of conduct will have to deal with the following matters –

- general conduct rules, to give effect to the seven principles. This corresponds broadly with paragraphs 3 to 7 of the current Code of Conduct. In 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.

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

### **Recommendation 2 -**

- a. **That the monitoring officer be instructed to prepare and present to the Standards Committee a draft code of conduct for recommending to the Cabinet for adoption by the full Council. That the draft code should –**
  - (iii) **equate to paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its committees and sub-committees; and**
  - (iv) **require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.**
- b. **That, when the Disclosable Pecuniary Interests Regulations are published, the monitoring officer, after consultation with the Chair of Standards Committee, add to that draft code provisions which he considers to be appropriate for the registration and disclosure of interests other than DPIs.**

## **Dealing with Misconduct Complaints**

### **“Arrangements”**

The Act requires that the Council adopts “arrangements” for dealing with complaints of breach of 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.

### **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 and the ability to refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate for him/her to take a decision on it, for example where he 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 he should be accountable for its discharge. For this purpose, it would be appropriate that he/she reports quarterly to the Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

### **"No Breach of Code" finding on investigation**

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 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.

### **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.

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

### **Recommendation 3A**



**That the monitoring officer be instructed to prepare and submit to the Committee for recommending to the Cabinet for approval by the full Council “arrangements” as follows -**

- a. that the monitoring officer be appointed as the proper officer to receive complaints of failure to comply with the code of conduct;**
- b. that the monitoring officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation.**
- c. that the monitoring officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to 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, he/she is to report the investigation findings to a consideration and hearings panel of the Standards Committee for local hearing;**
- f. that Council 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 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 3B**

**That a meeting be arranged between the Chair and Vice-Chair of Standards Committee and the group leaders for the Council and representatives of parish councils to discuss how the new system can best operate.**

### **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 co-opted member of any committee or sub-committee of the Council or parish council.

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 –

- 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; and
- 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, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

#### **Remuneration**

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 Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and 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 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.

#### **Issue 4 – How many Independent Persons are required?**

##### **Recommendation 4 –**

- a. **that the monitoring officer, in consultation with the Chair of Standards Committee, and with the advice of the Assistant Chief Executive – Human Resources be authorised to set the initial allowances and expenses for the Independent Person and any reserve Independent Persons, and this function subsequently be delegated to the Standards Committee;**
- b. **that the monitoring officer advertise a vacancy of the appointment of 1 Independent Person and 2 reserve Independent Persons;**
- c. **that a Committee comprising the Chair and three other members of Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.**

#### **The Register of Members' Interests**

##### **The register of members' interests**

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.

## **Issue 5 – Preparation of the Registers**

### **Recommendation 5 –**

- a. that the monitoring officer prepare and maintain a new register of members' interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;**
- b. that the monitoring officer ensure that all members are informed of their duty to register interests;**
- c. that the monitoring officer prepare and maintain new registers of members' interests for each parish council to comply with the Act and any code of conduct adopted by each parish council and ensure that it is available for inspection as required by the Act; and**
- d. that the monitoring officer arrange to inform and train parish clerks on the new registration arrangements.**

## **1 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 and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the monitoring officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.

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

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 the requirements (paragraphs 8.2, 8.3 or 8.4 of this report) becomes a criminal offence, rather than leading to sanctions.

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

The requirement to withdraw from the meeting room can be covered by standing orders, which would apply not just to meetings of the full Council, committees and sub-committees, but can apply also to Cabinet and Cabinet member meetings, so that failure to comply would be neither a criminal offence nor a breach of the Code of Conduct, although the meeting could vote to exclude the member.

#### **Issue 6 – What standing order should the Council adopt in respect of withdrawal from meetings for interests?**

**Recommendation 6 – The monitoring officer be instructed to recommend to Council a standing order which equates to the current Code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.**

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

Matters can be decided by a single member acting alone where the member is a Cabinet member acting under delegated powers, or where the member is a ward councillor and the Council chose to delegate powers to ward councillors.

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.

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

**Recommendation 7 – The monitoring officer be instructed to recommend to Council a standing order which equates to the current Code of conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.**

### **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 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 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;
- that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- that the authority considers that the dispensation is in the interests of persons living in the Council’s area;
- that, without a dispensation, no member of the Cabinet would be able to participate in this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- that the authority considers that it is otherwise appropriate to grant a dispensation.

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 Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a sub-committee, or to the monitoring officer. Grounds 11.3.1 and 11.3.4 are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the monitoring officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”. Grounds 11.3.2, 11.3.3 and 11.2.5 are rather more objective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

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

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

- on grounds set out in paragraphs 11.3.1 and 11.3.4 of this report to the monitoring officer with an appeal to Standards Committee; and**
- on grounds 11.3.2, 11.3.3 and 11.3.5 of this report to the Standards Committee, after consultation with the Independent Person.**

**Transitional Arrangements**

Regulations under the Localism Act will provide for –



- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current code of conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First-tier Tribunal from the start of the transitional period.

## **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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