

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

**March 2012**

## RMBC Standards Committee Response to Localism Act 2011

### Executive Summary

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. 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 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 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.*
- *The Independent Person should report quarterly to the Standards Committee on the discharge of his/her functions.*

## **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.

### **Recommendations/Alternatives/Actions for Consideration by RMBC**

*That Independent Members be co-opted to RMBC Standards Committee.*

*That there should be sufficient Independent Members to, at least, equal the number of Elected Members.*

*That Elected Members should not be appointed proportionally to the Standards Committee, and that 50% should be from the dominant political party and 50% from other parties.*

*That Independent Members form a sub committee of the Standards Committee and be given a wider remit.*

*That the remit of the independent element of the Standards Committee should include acting as Impartial Mentor/Supporter of any officer invoking the Whistleblowing procedures.*

## **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.

## **Recommendations/Alternatives/Actions for Consideration by RMBC**

*That the resolution of complaints be delegated to an independent sub committee.*

*That the necessity, and ability, to identify and meet training needs be resolved.*

*That processes for the reporting of transgressions be resolved.*

## **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 quarterly to the Standards Committee on the discharge of his/her functions.

### **Recommendations/Alternatives/Actions for Consideration by RMBC**

*That judgements on complaints against members should be considered by a committee.*

*That the appointment of Independent Person(s) should be considered carefully to ensure the impartiality and objectivity of candidates.*

*That 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.*

*That the Independent Person should not be available for consultation by both the Council and the subject member of the complaint.*

*That the Independent Person should report quarterly 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.