ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS

1.	**Meeting:**	**Cabinet**
2.	**Date:**	**23 May 2012**
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 ("the Act"); and the options for consideration by the Cabinet 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 8 elected members of the Council and 5 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 having regard to the current Standard Committee's *Local Assessment Criteria* and in particular paragraph 6 (seriousness of the complaint) the monitoring officer be delegated to determine whether the complaint should be referred for consideration by a sub-committee of the standards committee, comprising not less than 3 and no more than 5 co-opted independent members of the standards committee, or otherwise dealt with by her.

c. That the sub-committee's terms of reference be to consider complaints of failure to comply with the code of conduct and to make recommendations to the standards committee for consideration by the committee as to whether or not to direct the investigation of a complaint.

d. That the monitoring officer be instructed to seek resolution of complaints without formal investigation wherever practicable and to report quarterly to the standards committee on the discharge of this function.

e. 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.

f. 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, 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 hearing and determination by the panel, the panel having first sought and taken into account the independent person's views.

g. 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 , 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.

d. That the monitoring officer liaise with the monitoring officers of Barnsley, Doncaster and Sheffield councils, in relation to their respective appointment of an independent person or persons, with a view to agreeing an arrangement whereby each council may utilise the services of the independent persons appointed by the others in cases where its own independent person is conflicted from acting.

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 standards 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 current composition of RMBC is 63 members of whom 58 take the Labour whip. A standards committee of 7 members drawn proportionally from the political parties would result in 1 non Labour member. This strengthens the need to move away from proportionality in principle. 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. However, 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. Accordingly, it is suggested that the new standards committee should have 5 co-opted independent members, who would not have voting rights and who would form a sub-committee of independent members to consider and make recommendations to the parent standards committee as to the investigation or otherwise of complaints of failure to comply with the code of conduct referred to the sub-committee by the monitoring officer.

  **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" ("DPIs") (see below) which will be defined in regulations yet to be issued by the Secretary of State. DPIs 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 and also the complainant may consult the independent person is "unacceptable and unethical and would "compromise their independence, objectivity and credibility". Where the monitoring officer and the independent person disagree, it would be better to refer the case to a sub-committee of the standards committee for decision.

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, who would then make a recommendation to the standards committee. The current Standards Committee is of the view that this is the best way forward.

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.

(6) 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.

(7) 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, and should be within the limits of allowances currently paid to current independent members 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 DPIs in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result (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 seen 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.