



Committee and Date

Council

23 February 2012

Item

16

Public

THE LOCALISM ACT 2011 - THE AMENDED STANDARDS REGIME

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1. Summary

The Localism Act 2012 affects the Standards Regime throughout all levels of Local Government in England.

All Authorities will be required to adopt a code of conduct which is consistent with the seven principles of public life introduced by the Nolan Committee on Standards in Public Life. There will no longer be a statutory model code which must be adopted.

The Standards Committee will no longer be a statutory committee of the authority and will cease its current statutory function on a date to be confirmed but expected to be 01 July 2012. Independent and Parish Council members of the Standards Committee will cease to be co-opted members from that date.

Shropshire Council is required to have arrangements in place to receive and, where appropriate, investigate allegations that members of Shropshire Council or the Town/Parish Councils in Shropshire have failed to comply with their code of conduct.

2. Recommendations

- 2.1
 - a. **That the Council with effect from the relevant commencement date establish a Standards Committee comprising 7 elected members of the Council, appointed proportionally and comprising 4 Conservative, 2 Liberal Democrat, 1 Labour and 1 Independent Members;**
 - b. **That meetings of the Standards Committee be held as required to consider matters referred to it by the Monitoring Officer;**
- 2.2
 - a. **That the Monitoring Officer present to Council for adoption a draft Code of Conduct.**
 - b. **That, when the Disclosable Pecuniary Interests (DPI's) Regulations are published, the Monitoring Officer, after consultation with the Group Leaders, add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs.**

2.3.1 That the following “arrangements” be approved -

- a. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct for Shropshire Members and the Code for all Town and Parish Members;**
- b. That the Monitoring Officer be given delegated power, after consultation with the Independent Person where necessary, to determine whether a complaint merits formal investigation and to arrange such investigation. She be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for her to take the decision;**
- c. 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;**
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer after consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to the Standards Committee (in relation to Shropshire Councillors) or the Town/Parish Council to consider;**
- e. That Council delegate to the Standards Committee such of its powers as can be delegated to take decisions in respect of a member of Shropshire Council who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –**
 - Recommending to the member’s Group Leader (or in the case of un-grouped 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 arrange training for the member;**
 - Removing from all outside appointments to which he/she has been appointed or nominated by the authority;**
 - Excluding 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.**
 - Censure of the Member with or without a notice being required to be placed in the press.**

- 2.4 That the Monitoring Officer advertise and arrange for the appointment of an Independent Person.**
- 2.5**
- 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 of Shropshire Council 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 Parish Clerks on the new registration arrangements.**
- 2.6 The Monitoring Officer include in the Code of conduct a 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.**
- 2.7 That Council delegate the power to grant dispensations –**
- a. on Grounds set out in Paragraphs 10.2.1 and 10.2.4 of this report to the Monitoring Officer with an appeal to Standards Committee, and**
 - b. on Grounds 10.2.2, 10.2.3 and 10.2.5 to the Standards Committee.**

REPORT

3. Risk Assessment and Opportunities Appraisal

The Council is required by the Localism Act 2011 to adopt a code of conduct in order to demonstrate the promotion of good ethical governance. Failure to approve a suitable code will be a breach of the legislation and a failure to demonstrate the effective promotion of ethical governance.

It provides an opportunity to retain confidence in the ethical governance of the authority and demonstrates a commitment to public accountability for the actions of the members.

4. Financial Implications

There are no direct implications. The bill originally removed the requirement for a code of conduct to be in place and the removal of the requirement to consider allegations of misconduct. This presented a potential resource saving in terms of staff time. Amendments to the bill resulted in the continued devotion of staff

resources to administer a code and complaints in respect of Shropshire Council and the Town/Parishes. There is no opportunity to charge the Town/Parish Councils for staff time and the responsibilities of the Monitoring officer in terms investigations or the registers of interest.

5. Background

1 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 is presently proposed as the 1 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 authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

3 Standards Committee

There will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it is likely to remain appropriate to have a Standards Committee, it will be a normal Committee of the Council, without the unique features which were conferred by the previous legislation. As a result –

- 3.1 The composition of the Committee will be governed by proportionality. Substitute members can be appointed.
- 3.2 The Standards Committee will be able to appoint a Sub Committee to carry out some of its functions.
- 3.2 The current co-opted independent members will cease to hold office. The Act establishes for 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;
- 3.3 The Council will continue to have responsibility for dealing with standards complaints about members of Town and Parish Councils, but the current Parish Council representatives on the Standards Committee cease to hold office.

Recommendation 1

- a. **That the Council with effect from the relevant commencement date establish a Standards Committee comprising 7 elected members of the Council, appointed proportionally and comprising 4 Conservative, 2 Liberal Democrat, 1 Labour and 1 Independent Members;**
- b. **That meetings of the Standards Committee be held as required to consider matters referred to it by the Monitoring Officer;**

4 The Code of Conduct

The current 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 voting 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.

The Act prohibits members with a DPI from participating in authority business. Since participation would then amount to a criminal offence, it would seem sensible to continue the current practice of leaving the room during the debate and voting on the issue.

Recommendation 2

- a. **That the Monitoring Officer present to Council for adoption a draft Code of Conduct.**
- b. **That, when the Disclosable Pecuniary Interests (DPI's) Regulations are published, the Monitoring Officer, after consultation with the Group Leaders, add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs.**

5 Dealing with Complaints

5.1 "Arrangements"

The Act requires that the Council adopt "arrangements" for dealing with complaints of breach of the Code of Conduct both by Shropshire Council members and by Town/Parish Council members, and such complaints can only be dealt with in accordance with such "arrangements". So the "arrangements" must set out in some detail the process for dealing with complaints about members 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 Referrals, Review and hearings Sub-Committees, and enables the Council to 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, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

5.2 Decision whether to investigate a complaint

It is sensible 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 if necessary with the Independent Person 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. These arrangements would also 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.

5.3 In accordance with the legislation, the views of the Independent person will be sought during any investigation into an allegation and may be sought at any other time.

5.4 "No Breach of Code" finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, It would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if she feels appropriate.

5.5 "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 local 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.

Where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it may be necessary in respect of Shropshire Councillors for 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 Standards Committee can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result. In respect of investigations with regard to allegations that Town or Parish Councillors, a report will be sent with recommendations (where appropriate) from the Monitoring Officer for consideration by the Town/Parish Council

5.6 Action in response to a finding of failure to comply with Code

The Act does not give the Council, its Monitoring Officer or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of sanctions which the authority including the Town/Parish Councils can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following –

- 5.6.1 Recommending to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 5.6.2 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 5.6.3 Instructing the Monitoring Officer to arrange training for the member;
- 5.6.4 Removing or recommend that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority;
- 5.6.5 Excluding or recommend that the member be excluded from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 5.6.8 Censure the Member with or without a notice being required to be placed in the press.

5.7 Appeals

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

5.8 The above sanctions could be used by a Town or Parish Council.

Recommendation 3 – That the following “arrangements” be approved -

- a. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct for Shropshire members and for the Code for all Town and Parish members;**
- b. That the Monitoring Officer be given delegated power, after consultation with the Independent Person where necessary, to determine whether a complaint merits formal investigation and to arrange such investigation. She be instructed to seek resolution of complaints without formal**

investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Standards Committee where she feels that it is inappropriate for her to take the decision;

- c. 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;**
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer after consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to the Standards Committee (in relation to Shropshire Councillors) or the Town/Parish Council to consider;**
- e. That Council delegate to the Standards Committee such of its powers as can be delegated to take decisions in respect of a member of Shropshire Council who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –**
 - Recommending to the member’s Group Leader (or in the case of un-grouped 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 arrange training for the member;**
 - Removing from all outside appointments to which he/she has been appointed or nominated by the authority;**
 - Excluding 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.**
 - Censure of the Member with or without a notice being required to be placed in the press.**

6 Independent Person(s)

The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

6.1 “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 District Council (not just of those present and voting).

A person is considered not to be “independent” if –

- 6.1.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the District Council or of any of the Parish Councils within its area;
- 6.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or
- 6.1.3 he is a relative or close friend of a current elected or co-opted member or officer of the District Council or any Parish Council within its area, or of any elected or cop-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- (a) the candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e);
or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

6.2 Functions of the Independent Person

The functions of the Independent Person(s) are –

- They must be consulted by the authority 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);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted voting member of Shropshire Council or of a Parish Council against whom a complaint has been made.

6.3 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 sort notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

6.4 Remuneration

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she will need to be available to be consulted by members against whom a complaint has been made and the Monitoring Officer, 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. Travelling and Subsistence allowances only would be available.

- 6.5 The legislation requires that the Independent Person be appointed following an advertisement being placed in the press. That the Monitoring Officer, Speaker and Chairman undertake the appointment process.

Recommendation 4

- a. That the Monitoring Officer advertise and arrange for the appointment of an Independent Person.**

7 The Register of Members' Interests

7.1 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 Shropshire Council offices and on the Shropshire Council's website.

At present we do not know what Disclosable Pecuniary Interests 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 an authority'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 Shropshire Council offices and on the Shropshire 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.

7.2 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 this authority 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 Shropshire Council to recover any costs from Parish Councils.

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 of Shropshire Council 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 Parish Clerks on the new registration arrangements.**

8 Disclosure of Interests and Withdrawal from Meetings

- 8.1 If you have a DPI which is registered, there is no requirement to declare it at a meeting but you are not permitted to take part in the debate or voting on the issue.
- 8.2 If your DPI is not registered, there is a requirement to declare it at the meeting and to notify the Monitoring Officer that it needs to be included in your register of interests.
- 8.3 There is no legislative requirement to formally withdraw from the room in which the meeting is being held.
- 8.4 If a member has a DPI in any matter, he/she must not –

- 8.4.1 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
- 8.4.2 Participate in any vote on the matter,
unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 8.5 Failure to comply with the requirements (paragraphs 8.2, 8.3 or 8.4) becomes a criminal offence, rather than leading to sanctions;
- 8.6 Given that participation with a DPI may result in the commission of a criminal offence, it would seem sensible for the protection of members to continue to require that they withdraw from the room.

Recommendation 6

The Monitoring Officer include in the Code of Conduct a 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.

9 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.

10 Dispensations

- 10.1 The provisions on dispensations are significantly changed by the Localism Act.
- 10.2 A dispensation will be able to be granted in the following circumstances –
- 10.2.1 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;
- 10.2.2 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;

- 10.2.3 That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - 10.2.4 That, without a dispensation, no member of the Cabinet would be able to participate on 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
 - 10.2.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 10.3 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 10.4 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.

Recommendation 7 – That Council delegate the power to grant dispensations –

- a. on Grounds set out in Paragraphs 10.2.1 and 10.2.4 of this report to the Monitoring Officer with an appeal to Standards Committee, and
- b. on Grounds 10.2.2, 10.2.3 and 10.2.5 to the Standards Committee.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

None

Cabinet Member (Portfolio Holder)

Keith Barrow

Local Member

All

Appendices

None