

THE FUTURE OF THE LOCAL STANDARDS FRAMEWORK

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1. Summary

- 1.1 The Localism Bill will place a new duty on principal authorities in England to promote and maintain high standards of conduct among elected and co-opted members of the authority, but will also remove the present means of discharging this duty, by abolishing the General Principles, the Model Code of Conduct, the Standards Board for England and local authority Standards Committees. In their place will be a new statutory Register of Members' Interests, with criminal penalties for failure to comply.
- 1.2 High standards of conduct in public life go beyond mere compliance with a statutory interests regime. The General Principles indicate that Parliament considered that standards covered such issues as honesty and integrity, openness and accountability, respect for others, personal judgement and stewardship. So, an authority which simply implemented the statutory interests regime would fail to address substantial areas of member conduct, and so fail to discharge its new duty.
- 1.3 Accordingly, this report seeks Members' approval to set up a Working Party to develop a voluntary local code of conduct for elected Members of the Council and a bespoke process whereby complaints about Member conduct can be dealt with.

2. Recommendations

It is recommended that:-

- a) The Committee recommend to Council that a local code of conduct, incorporating the standards of conduct expected of Councillors with regard to respect, equalities, bullying, intimidation, attempts to compromise impartiality of officer, disclosure of confidential information, prevention of access to information, disrepute and improper use of position, be prepared as soon as possible and brought to Council for approval.

- b) The Committee recommend to Council a process by which complaints are to be dealt with.
- c) A Working Party, consisting of the 6 members of the Committee who are Shropshire Councillors, be established to consider and make recommendations to the Standards Committee as necessary to facilitate (a) and (b) above

REPORT

3. Risk Assessment and Opportunities Appraisal

It is essential that Members practice high standards of conduct in public office, to protect both themselves and the Authority from criticism and the threat of legal challenge. High ethical conduct is fundamental to the running of an open and transparent democratic organisation. It is more difficult to achieve this objective in the absence of a clear code of expected behaviour and an effective process for considering complaints about Member behaviour.

4. Financial Implications

The current legislative system for dealing with such matters is cumbersome, time consuming and costly, so the opportunity to deal with allegations of misconduct swiftly and efficiently at a local level will reduce the financial burden to the Authority.

5. The Need for a New Approach

Non-statutory Code of Conduct

- 5.1 The Localism Bill envisages that local authorities may voluntarily wish to adopt their own non-statutory Code of Conduct, and it is hard to see how any authority could claim to promote and maintain high standards of conduct unless it had set out what standards it expected of its members. The simplest course would be simply to re-adopt the general conduct rules in paragraphs 3-7 of the Model Code, as these are the parts which will not be replaced by the statutory interests regime (see appendix A attached).
- 5.2 It is not appropriate for Members to bully, breach confidentiality, misuse their positions for personal advantage, fail to treat people with respect, cause the authority to discriminate unlawfully, intimidate or victimise witnesses, bring their offices as members or their authorities into disrepute, misuse council resources or ignore statutory officers' advice. A non-statutory Code applied to conduct as a councillor could easily address the need to make such standards clear to all Members. Such a non-statutory Code would be supplemented by guidance to Members on high risk areas, such as use of IT and the Internet, planning and lobbying, member-officer relations and gifts and hospitality, as is currently the case.
- 5.3 The Localism Bill provides that, where a local authority does voluntarily adopt a non-statutory Code of Conduct, it must then respond to any written complaints that a Member or co-opted Member has failed to comply with that

Code. This can be done by considering whether the matter should be investigated and the manner of such an investigation. If satisfied that a Member has failed to comply with the code of conduct, the Council then needs to decide what action, if any, to take. The Bill provides an opportunity to delegate more of the process directly to councils, to enable speedier investigation and resolution of straightforward matters.

Investigation of complaints

- 5.4 In order to ensure Member ownership of the Council's new complaints process, and enforcement of any non-statutory code of conduct, it is considered that a committee such as the current Standards Committee (non-statutory) will be required.
- 5.5 The Bill removes the rigid bureaucratic process for handling of complaints, so that a newly formed Standards Committee could allow the Monitoring Officer to seek local resolution and determine that a complaint need go no further, if the complainant is satisfied with the Member's response to the complaint. If the Monitoring Officer felt that an investigation was required, the resulting investigation report might then go to the Standards Committee for examination, and to give the Member an opportunity to respond. It is clear that Members and the public want complaints about Members to be dealt with more speedily and in a less cumbersome manner than is currently the case.
- 5.6 Currently, a complaint is required to be considered in a very formal, often overly bureaucratic, process which has clear resource implications, and the Council has no discretion to provide alternative solutions.
- 5.7 The mechanics of how to deal with any complaint will require careful consideration. Professional organisations such as the Association of Council Secretaries and Solicitors are expected to provide guidance to Local Authorities with regard to what any local code and investigation process might look like. It is proposed, at this stage, that Shropshire Council await such guidance, prior to drafting a local code and complaint process.

Independent members

- 5.8 Section 102(3) of the Local Government Act 1972 enables the co-option of non-councillors onto the Standards Committee, but s.13 of the Local Government and Housing Act 1989 prevents them from having a vote. The Local Government Act 2000 required that Independent members be appointed as voting members to the statutory Standards Committee but this will be repealed. There will no longer be a requirement for Independent members on the Standards Committee.

Parish Councils

- 5.9 As currently drafted, the Localism Bill will require that Town and Parish Councils provide a mechanism to consider complaints that its own Councillors have failed to comply with their code of conduct, in the event that they choose to adopt a code of conduct. Shropshire Council will cease to have any

responsibility for considering complaints about Parish Councillors, and it will not be necessary for Parish Councillors to be involved with a Shropshire Council Standards Committee.

Ability to deal with Member misconduct

- 5.10 Without the statutory sanctions of suspension from office, an authority's ability to deal with serious Member misconduct will be strictly circumscribed. However, findings that a Member had failed to comply with the code of conduct would be publicly available, and could be widely publicised. Many believe that publicly named and shamed in this way would be sufficient deterrent from acting inappropriately.

6 Additional Information

During a debate on 17 May 2011 in the House of Commons on the Localism Bill, Andrew Stunell, Parliamentary Under-Secretary of State in the Department for Communities and Local Government, said:

"I would have thought that the huge majority of local authorities will continue to have a published and open code of conduct. Indeed, I should have thought that it would reflect adversely on the reputation of a local authority if it chose not to do so. However, the right place for that decision to be taken is in that local authority in the light of the views of its electorate; it is not something that should be imposed from above."

7 Conclusions

- 7.1 There is clear evidence that inappropriate Member conduct can seriously disrupt the ability of an authority to discharge its functions effectively. It can discredit the authority with the public and undermine the wide good reputation of local government and local democracy. For example, repeated leaking of confidential information deters citizens from confiding in the authority. Poor Member behaviour can drive out good officers and deter good candidates from seeking election to the Council. Breaches of the general conduct rules are rarely visible to the electorate and are rarely resolved through the ballot box, and an authority needs to limit the damage which an errant member can wreak before the next election.
- 7.2 For those reasons, there are clear benefits in Shropshire Council choosing to voluntarily introduce a new Member Code of Conduct and related Complaints procedure. It will do much to assure local people of the seriousness with which the Council treats matters of ethical behaviour by its elected Members.

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

Cabinet Member (Portfolio Holder)

Local Member

All areas of the County

Appendices

Appendix A – Paragraphs 3 – 7 of the Code of Conduct