

Southend-on-Sea Borough Council

Agenda
Item No.

3

Report of Corporate Director Support Services

to

Standards Committee

on

11th July 2012

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Standards and the Localism Act 2011

A Part 1 Public Agenda Item

1. Purpose of Report

This report is to inform Members of the provisions of the Localism Act 2011 as it relates to the Standards regime and invites the Standards Committee to make recommendations to Council on a new regime.

2. Recommendations

The recommendations are set out in sections 3.2, 3.3(f), 3.4(h), 3.5(f) and 3.6(f) below.

3. Background

3.1 The Localism Act 2011

The Localism Act 2011 ("the Act") makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. The Government's intention is that a new more proportionate standards regime should come into effect after 1st July 2012, although the Standards Board for England was abolished on 31st March 2012.

The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

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

3.2 Standards Committee

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee.

However the Council must still deal with standards issues and casework, so a Standards Committee needs to be appointed by the Council under S.101 of the Local Government Act 1972.

It will be a normal Committee of Council, without the unique features conferred by the previous legislation. As a result:

- The composition of the Standards Committee will be governed by political proportionality;
- The present restriction permitting only one member of the Executive on the Standards Committee will cease to apply;
- The current co-opted independent members will cease to hold office. However, the Act establishes a new category of Independent Persons who must be consulted at various stages under the new arrangements and this matter is dealt with further in 3.5 below;
- The Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Leigh-on-Sea Town Council, but their representatives on the current Standards Committee cease to hold office. However the Council can choose whether it wants to continue to involve Town Council representatives and if so how many representatives it wants. It is recommended that the Council has 2 co-opted non-voting Town Council representatives on the Standards Committee, so it can make recommendations in respect of Town Councillors. The alternative of establishing a Joint Committee with the Town Council is not recommended as it involves complex delegations of powers.

Recommendations:

That the Council establishes a new Standards Committee consisting of 7 Members of the Council and to which proportionality shall apply.

Leigh-on-Sea Town Council be invited to nominate 2 Town Councillors to be co-opted as non-voting Members.

The Independent Persons be invited to attend Standards Committee meetings, but without voting rights.

The Terms of Reference of the Standards Committee to be as set out in Appendix 1 and Article 9 of Part 2 and Section 7 of Part 3 Schedule 2 of the Constitution be amended accordingly. In addition necessary consequential amendments be made to the Constitution, particularly to references in Parts 5(b), 5(d) and 5(h).

3.3 The Code of Conduct

- (a) The current Members' Code of Conduct in Part 5(a) of the Constitution (which followed the nationally prescribed model Code) is repealed and Members will no longer have to give an undertaking to comply with the Code.
- (b) However the Council is required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity. The Council's new Code must, viewed as a whole, be consistent with the following seven "Nolan Principles": Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- (c) There is no prescribed national model Code, although clearly there is advantage in a consistency of approach.
- (d) In April 2012 the Local Government Association finally produced a template Code and a day later the Government issued some illustrative text. Copies of these documents are attached at **Appendix 2**. However not only did these documents come very late in the day, but neither sets out specific obligations or incorporates the detailed rules on "Disclosable Pecuniary Interests" ("DPIs") set out in the Relevant Authority (Disclosable Pecuniary Interests) Regulations 2012 made under the Act on the 6th June 2012.
- (e) I am pleased to report that at the request of the Essex Chief Executives & Leaders Group, a new Code of Conduct has been developed by the Public Law Partnership. PLP is the legal services partnership of authorities in Essex, Hertfordshire and Suffolk who work together to share resources and ensure legal support is provided to all member authorities. A copy of this new Code is attached at **Appendix 3** which I updated slightly.

This new Code:

- incorporates a clear set of obligations;
- incorporates all the statutory requirements relating to Disclosable Pecuniary Interests (DPI's);
- requires registration of DPI's, other pecuniary interests and certain non-pecuniary interests.
- requires disclosure of DPI's, other pecuniary interests and non-pecuniary interests at meetings;
- requires withdrawal at a meeting if a Member has a DPI or other pecuniary interest (and has not obtained a dispensation) or in the case of certain non-pecuniary interests; and
- covers gifts and hospitality.

The latest information is that most Councils in Essex will be adopting this Code, although it will be subject to regular review.

A consistency of approach has a number of advantages:

- It will mean that the standards of conduct expected of Members in this area will be the same;
- A proliferation of different Codes would be confusing for members of the public wishing to know what standards are expected of their representatives;
- It will assist those Members who sit on more than one authority e.g. this Council and the Fire Authority, who will only have to follow one set of rules;
- It will make joint training events much easier;
- It will facilitate one authority assisting another with investigations and interpretation.

(f) **Recommendation**

That the Council adopts a new Code of Conduct in the form set out in Appendix 3.

3.4 Dealing with Misconduct Complaints

(a) “Arrangements”

- The Act requires the Council to adopt “arrangements” for dealing with complaints of breaches of the Code of Conduct by Southend Borough Councillors and by Leigh on Sea Town Councillors.
- 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 Code of Conduct.
- The Act repeals the requirements for separate Assessment, Review and Hearing Sub-Committees and enables the Council to establish its own process, which can include delegation of decisions on complaints. 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 the Standards Committee and to the Monitoring Officer.

(b) 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 with the Independent Person) and the ability to refer particular complaints to the Standards Committee where the Monitoring Officer feels that it would be inappropriate for him to take a decision on it e.g. where he 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.
- If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose it would be appropriate that the Monitoring Officer reports to the Standards Committee from time to time on the number and nature of complaints received and draws to the Committees attention areas where training or other action might avoid further complaints.

(c) “No Breach of the Code” finding on investigation

- Where a formal investigation finds no evidence of a failure to comply with the Code of Conduct, the current requirement is that this is reported to the Hearings Sub-Committee which takes the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to the Standards Committee if he feels appropriate.
- It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him or her to get an overview of current issues and pressures and that the Monitoring Officer provides a summary report of each such investigation to the Standards Committee for information.

(d) “Breach of the Code” finding on investigation

- Where a formal investigation finds evidence of a failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity for 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. However it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree to this as a resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

- 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 Hearings 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 Sub-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.

(e) Action in response to a Hearing finding of a failure to comply with the Code

The Act does not give the Council or its Standards Committee powers to impose sanctions on a Member such as suspension or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions available to the Standards Committee is limited to:

- Censuring or reprimanding the Member;
- Reporting its findings to the Council (or Town Council) for information;
- Recommending to the Member's Group Leader 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;
- Asking the Monitoring Officer to arrange training for the Member;
- Removing the Member from all outside appointments to which he / she has been appointed or nominated by the Council;
- Withdrawing facilities provided to the Member by the Council, such as a computer, website and / or email and internet access; or
- 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.

The Act does not give the Standards Committee power to do any more in respect of a Member of a Town Council than make a recommendation to the Town Council on action to be taken in respect of the Member. Town Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Sub-Committee as Joint Sub-Committees with the Town Council but this is not recommended as stated in 3.2 above.

(f) Appeals

The Act does not provide for any appeals mechanism against such decisions by either the complainant or Member and it is not recommended to establish such a mechanism. A decision would be open to judicial review by the High Court if it was patently unreasonable or if it was taken improperly or if it sought to impose a sanction which the Council had no power to impose.

(g) The Public Law Partnership has developed revised Complaints against Members Rules so that complaints alleging misconduct can be dealt with. These Rules are attached at **Appendix 4**. It is recommended that these Rules are adopted and the case for having standard processes across neighbouring authorities is very strong.

(h) Recommendations

(i) That the Monitoring Officer be appointed as the Proper Officer to receive complaints for failure to comply with the Code of Conduct.

(ii) That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report to the Standards Committee on the discharge of this function from time to time.

(iii) Where the investigation finds no evidence of a 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.

(iv) 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 a resolution in appropriate cases, with a summary report for information to the Standards Committee. Where such resolution is not appropriate or not possible, the Monitoring Officer is to report the investigation findings to the Hearings Sub-Committee of the Standards Committee for a hearing.

(v) That Council delegates to the Standards Hearing Sub-Committee 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.

(vi) That the Council adopts the new Complaints against Members Rules as set out in **Appendix 4** to replace the existing Rules in Part 4(i) of the Constitution and that the delegations to the Monitoring Officer in Part 3 Schedule 3 to the Constitution be amended as per **Appendix 5**.

3.5 Independent Person(s)

(a) The arrangements for dealing with Complaints referred to in 3.4 above, must include provision for the appointment of at least one Independent Person:

- whose views must be sought, and taken into account, by the Council before it makes a decision on an allegation that it has decided to investigate; and
- whose views may be sought by the Council in relation to an allegation in other circumstances or by a Member (or Co-opted Member) whose behaviour is subject to the allegation.

Independent Persons cannot be voting members of the Standards Committee but may be invited to attend meetings and this is recommended (see 3.2).

(b) An Independent Person must not:

- Be a Member, co-opted Member or officer of the Council, or Leigh-on-Sea Town Council.
- Be a relative or close friend, of such a person. There is a wide ranging definition of “relative”.
- Have been a Member, co-opted Member or officer of the Council or Leigh-on-Sea Town Council in the last five years.

(c) The Act prescribes the process for the appointment of Independent Persons and they must be approved by a majority of the Members of the Council.

(d) Transitional arrangements permit the appointment as an “Independent Person” of a former independent member of the Council’s Standards Committee and it is recommended that the Council appoints the 3 independent members on the old Standards Committee to be Independent Persons initially for a period of 12 months.

(e) Remuneration

As an Independent Person will 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.

(f) **Recommendations**

- **That the 3 independent members on the old Standards Committee be appointed as Independent Persons for an initial period of 12 months.**

- **That the Independent Persons continue to receive the allowances which they currently receive as an independent member and that such payments be reviewed in due course by the Standards Committee.**

3.6 The Register of Members' Interests, Disclosure of Interests & Withdrawal

- (a) The Act abolishes the concepts of personal and prejudicial interests, introduces new "Disclosable Pecuniary Interests" and changes the registration and declaration requirements.
- (b) Disclosable Pecuniary Interests (DPI's)

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ("the Regulations") define specific Disclosable Pecuniary Interests (DPI's) that Members and co-opted Members must register and disclose.

S.34 of the Act provides that where a Member has a DPI it is a criminal offence:

- to fail to register that interest (or to provide information which is false or misleading);
- to fail to disclose it at a meeting (unless already registered);
- to participate on a relevant item of business (unless the Member has a dispensation); or
- to take any action on the matter as an Executive Councillor.

So what is a "Disclosable Pecuniary Interest"? The Act says that:

- It is an interest of the Member in question, or his or her spouse or civil partner, or of someone with whom the Member is living as husband and wife or as if they were civil partners – these are all called "relevant persons" in the Regulations;
- It must be an interest of which the Member is aware; and
- It must be of a kind specified in the Regulations.

In summary the Regulations specify the following to be DPIs:

- The relevant person's employment, office, trade, profession or vocation, carried on for profit or gain (actually they say "vacation", but you will not have to register your summer holidays!).
- Sponsorship – any payment of expenses as a Member, or your election expenses.
- Any contract between the relevant person, or a body in which the relevant person has a beneficial interest, and the Council, for the provision of goods or services or the execution of works, which has not been fully discharged.
- Any beneficial interest in land in the Council's area.
- Any licence to occupy land in the Council's area for a month or longer.
- Any tenancy where the Council is the landlord and the relevant person has a beneficial interest in the body that is the tenant.

- Any beneficial interest in securities in a body over a prescribed value where the body has a place of business or land in the Council's area.

These DPI's are effectively a rehash of the interests listed in paragraph 8(1)(a) of the old model code, but without reference to membership of outside bodies, charities or other public bodies, or to gifts and hospitality. On the other hand, Members previously only had to register their own interests, not those of other "relevant persons", although they would have had to declare such interests.

(c) The Register of Members Interests

- The Monitoring Officer is required to maintain a Register of Members Interests which must be available for public inspection and put on the Council's website.
- The Monitoring Officer is also responsible for maintaining a Register for Leigh-on-Sea Town Council and for making it available for public inspection on the Town Council's website.
- The Act requires Members and co-opted Members to notify the Monitoring Officer of their DPIs (and the DPI's of relevant persons) within 28 days of becoming a Member and these must be entered on the Register. Failure by the Member to do so is a criminal offence as referred to above, but it would not prevent the Member acting. The Regulations do not clearly address existing Members, but the new Code provides for Registration within 28 days of the Council adopting the Code i.e. by 19th August 2012.
- In addition Members and co-opted Members must notify the Monitoring Officer within the same time frame of any other pecuniary or non-pecuniary interests which the new Code of Conduct requires to be registered pursuant to S.29(2) of the Act.

The new Code at **Appendix 3** requires registration of several other pecuniary interests and certain non-pecuniary interests of the Member (but not of relevant persons). Failure to comply is not a criminal offence, but can be dealt with as a breach of the Code.

- A template for the registration of Members' Interests is attached at **Appendix 6**.
- The Act does not impose any continuing requirement for a Member to keep the Register up to date, except on re-election or re-appointment, but the new Code requires this. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the Register.

(d) Disclosure of Interests

- The duty to disclose arises whenever a Member attends any meeting of Council, Cabinet, Committee or sub-committee and is aware that he / she has an interest specified in the Code (DPI, other pecuniary interest or non-pecuniary interest) in any matter being considered at the meeting. So the duty applies even if the Member would be absent from that part of the meeting where the matter in question is under consideration.
- The new Code provides that such a disclosure must be made even if the Member has already registered the matter in the Register of Interests or sent off a request to the Monitoring Officer to register it (a “pending notification”).
- Failure to disclose a DPI is a criminal offence. Failure to disclose an other pecuniary interest or non-pecuniary interest is a breach of the Code.

(e) Non-Participation and Withdrawal

- If a member has a DPI in any matter, the Act requires that he / she must not:
 - (a) 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
 - (b) Participate in any vote on the matter;

unless the Member has obtained a dispensation to allow him/her to speak and / or vote – see 3.8 below.

Failure to comply is a criminal offence. In addition the new Code requires withdrawal from the room when the matter is considered.

- If a Member has an Other Pecuniary Interest, the Code imposes the same obligations on the Member. Failure to comply is a breach of the Code.
- If a Member only has a non-pecuniary interest, then the Code provides that he or she can participate and vote (provided that interest has been declared), unless the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member’s judgement of the public interest or may give rise to a perception of conflict of interest or bias; in which case the Member must withdraw.

- The requirement to withdraw from the meeting room needs to be reinforced by Standing Orders. Standing Order 20 already covers this matter but needs amendment to refer to the new Code (see Appendix 7).

(f) **Recommendations**

- (i) **That the arrangements for registering and declaring interests as set out above be agreed and that the Monitoring Officer maintains a Register of Members' Interests for Southend Councillors and Leigh-on-Sea Town Council and ensures these are available for inspection as required. The delegations be amended to reflect these obligations as per Appendix 5.**
- (ii) **That the Monitoring Officer ensures that all Members are informed of their duty to register interests by 19th August 2012 and that the template at Appendix 6 be agreed for this purpose.**
- (iii) **That Standing Order 20 be amended as per Appendix 7 to require a Member to withdraw from the room where the meeting is being held including from the public gallery, during the whole of consideration of any item of business in which he / she has a DPI or other pecuniary interest or specified non-pecuniary interest (except where the Member is permitted to remain as a result of the grant of a dispensation).**

3.7 Sensitive Interests

- (a) The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
- (b) 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".
- (c) 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.

3.8 Dispensations

- (a) The provisions on dispensations are significantly changed by the Act. In future, a dispensation can be granted to allow a Member to participate in a matter even though he/she has a DPI 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;
 - That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
 - That the dispensation is in the interests of persons living in the authority’s area;
 - That, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 - That it is otherwise appropriate to grant a dispensation.
- (b) Any grant of a dispensation must specify how long it lasts for, up to maximum of 4 years.
- (c) Under the Local Government Act 2000 dispensations had to be granted by the Standards Committee. The Act gives discretion for this power to be delegated to an officer, but this is not recommended.

3.9 Transitional Arrangements

Regulations under the Act provide for:

- (a) Independent members on the old Standards Committee to be appointed as Independent Members under the new regime as explained in 3.5
- (b) Any unresolved complaints to be resolved using the new arrangements.

4. **Other Options**

The adoption of a different regime and the areas of discretion are outlined in this report.

5. Reasons for Recommendations

A new standards regime needs to be introduced to comply with the law.

6. Corporate Implications

6.1 Contribution to Council's Vision & Corporate Priorities

Excellent Council

6.2 Financial Implications

The costs of setting up and administering the new standards regime will be no less onerous than the previous regime.

6.3 Legal Implications

As set out in the report.

6.4 People Implications

The new standards regime will affect all Members and officers involved in administration.

6.5 Property Implications

None

6.6 Consultation

None

6.7 Equalities and Diversity Implications

No significant implications are envisaged.

6.8 Risk Assessment

Risks have been assessed as an integral part of the report preparation.

6.9 Value for Money

The Council is obliged to introduce a new standards regime.

7. Background Papers

The Localism Act 2011 and Regulations made under the Act.

8. Appendices

- Appendix 1** Revised Terms of Reference of the Standards Committee (Part 2 – Article 9 and Schedule 2 Part 3 – Section 7)
- Appendix 2** LGA Template & Illustrative Text issued by the Government (April 2012)
- Appendix 3** Proposed new Members Code of Conduct (Part 5(a) of the Constitution)
- Appendix 4** Revised Complaints against Members Rules (Part 4(i) of the Constitution)
- Appendix 5** Amendment of Monitoring Officer Delegations in Part 3 Schedule 3 to the Constitution.
- Appendix 6** Template for Registering Interests
- Appendix 7** Amended Standing Order 20 (Part 4(a) of the Constitution)