

STANDARDS COMMITTEE

AGENDA

Meeting to be held in the Civic Centre (Committee Room No. 1) on
Wednesday, 30th May 2012 at 2.30 p.m.

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1.	Apologies for Absence	
2.	Minutes of the Meetings of the Committee held on 15th March, 2012 (Copies herewith).	1
3.	Declarations of Interest (if any)	
4.	The Localism Act 2011 – The Amended Standards Regime Report of the Head of Law and Governance (copy herewith).	4

E. Waugh,
Head of Law and Governance.

Civic Centre,
SUNDERLAND.

22nd May, 2012

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request.

At a meeting of the STANDARDS COMMITTEE held in the CIVIC CENTRE, SUNDERLAND on 15TH MARCH, 2012 at 11.00 a.m.

Present:-

Mr. G.N. Cook in the Chair

Councillors Shattock, Tate and Wakefield together with Mr. J.P. Paterson and Mr. C. Stewart and Councillor Wilkinson (Hetton Town Council).

Apologies for Absence

Apologies for absence were submitted on behalf of Councillors Charlton, Forbes and Hepple (Hetton Town Council).

Minutes of the Last Meeting of the Committee

The minutes of the last meetings of the Committee held on 25th November and 7th December, 2011 (copies circulated) were submitted.

The Chairman drew Members attention to the memo circulated in respect of the Proud of Sunderland Lamppost Banners Project which gave responses to the questions posed by the Committee.

1. RESOLVED that the minutes be confirmed and signed as correct records.

Declarations of Interest

There were no interests declared.

Localism Act 2011 – The Amended Standards Regime

The Head of Law and Governance and Monitoring Officer submitted a report (copy circulated) outlining the changes to the new Standards Regime and recommending proposals in respect of the recruitment of “Independent Persons”, as required by the Act in order for the Council to ensure that appropriate arrangements are in place in readiness for the implementation date of the new legislative provisions that are expected to come into force on 1st July 2012.

(For copy report – see original minutes).

The Head of Law and Governance and Monitoring Officer, Ms. Elaine Waugh briefed the Committee on the report highlighting that the Council must adopt a Code of Conduct dealing with the conduct of its elected and co-opted Members when acting in that capacity and that the Code can contain whatever the Council thinks appropriate provided it is consistent with the Nolan principles and makes appropriate provision in respect of the declaration of interests.

Ms. Waugh advised that the Association of Council Secretaries and Solicitors had passed the draft Code of Conduct it had drawn up to the Local Government Association (the LGA) for consideration and once this had been considered by the LGA, it would be submitted to the Standards Committee for consideration.

Ms. Waugh advised that the Council must put in place arrangements under which written allegations of breaches of the Code of Conduct can be investigated and decisions on them can be made. There was no legislative requirements to have a 'Standards Committee' however whatever arrangements the Council chooses to investigate complaints must include the appointment by the Council of at least one "Independent Person".

Ms. Waugh briefed the Committee on the arrangements for recruiting the Independent Person , the requirements he or she must meet and the role they would undertake.

Ms. Waugh briefed the Committee on the proposals regarding Disclosable Pecuniary Interests advising that the regulations were not yet available.

Ms. Waugh concluded that a meeting of the Standards Committee Chairs and Monitoring Officers in the region would be taking place the following week to discuss the issues and arrangements to be put in place to implement a new regime from 1st July. A report would be submitted to the Standards Committee as more information becomes available and recommendations submitted to the Council for approval.

Members discussed the role the Independent Person was expected to undertake which they felt was difficult to comprehend and they were sceptical as to how this would work in practice. They commented on the valuable role the Standards Committee had played in helping to promote and maintain high standards of conduct in the Authority. Members were of the opinion that currently there was a very clear Code of conduct and penalties for any Member who did not comply. Their view was that the Localism Act was dismantling a well established and successful regime which was respected as being independent from the Council.

Full consideration having been given to the report; it was:-

2. RESOLVED that the Committee recommends to Council that:-

- (i) there be two Independent Persons appointed;

- (ii) the appointments be for two years, but with provision to extend for a further three years without re-advertisement;
- (iii) a Panel comprising the Chair and three other members of the current Standards Committee be set up to shortlist and interview candidates and to make a recommendation to Council for appointment; and
- (iv) the Head of Law and Governance, in consultation with the Executive Director of Commercial and Corporate Services, be authorised to finalise the role description and set the initial allowances and expenses for the Independent Persons and to take all necessary steps to progress their recruitment.

The Chairman thanked Members for their attendance and closed the meeting.

(Signed) G.N. COOK,
Chairman.

The Localism Act 2011 – The Amended Standards Regime

Report of the Head of Law and Governance

1 Introduction and Overview

- 1.1 At its meeting on 15 March, the committee received a report outlining the changes to the Standards regime made by the Localism Act 2011 (the Act), which are expected to come into force with effect from 1 July 2012. The Committee also recommended that the process for recruitment of two Independent Persons be commenced.
- 1.2 At the time of writing this report, the relevant provisions of the Act, when brought into force, effectively prevent the Independent Person from being a member or co-opted member of the Authority concerned or a person who has been such a member in the five years prior to appointment. Communities and Local Government, (CLG), has indicated however that the transitional arrangements which are to be introduced, will include the option to appoint an independent member as an Independent Person, if an Authority so wishes, and that this will probably apply for a limited time after the commencement order. It is likely that the advertising requirements under the Act will still be required to be met. At the time of writing, these transitional provisions have not been made available and therefore the position as to whether or not any of the current independent members may be appointed, is still uncertain.
- 1.3 There are a number of other issues that must be determined by the Council regarding the new regime, which are set out in this report for the Committee to consider and make recommendations upon.

2 Duty to promote and maintain high standards of conduct

- 2.1 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

- 3.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. Whilst there will be no legal requirement for the Council to have a Standards Committee, there will still be a need for a group of members to deal with standards issues, consider complaints, decide if there has been a breach and if so, what sanction should be imposed. At its annual meeting on 16 May 2012, the Council agreed to continue to have a Standards Committee comprised of eight elected members of the

Council and two non-voting co-optees nominated by Hetton Town Council. Such a Committee will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result, it must be politically balanced unless Council votes otherwise with no member voting against.

- 3.2 Rather than have the Standards Committee as a diaried meeting, it will be convened as and when required to undertake business.

Appendix 1 sets out the proposed terms of reference and functions for the new committee.

Issue 1 – The Council must agree the terms of reference for the new Standards Committee.

Recommendation 1

That the Council be recommended to agree the terms of reference set out in Appendix 1 of this report.

4 The Code of Conduct

- 4.1 The Council must adopt a code of conduct dealing with the conduct of its elected and co-opted members when acting in that capacity. The code can contain whatever the Council thinks appropriate, provided it is consistent with the seven Nolan principles (Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership) and that it includes such provision as the Council thinks appropriate for the registration and disclosure of pecuniary and other interests.
- 4.2 Since the last meeting of the Committee, two draft Codes have been issued, one, as expected, from the Local Government Association (LGA) and another by CLG, both of which are shown in Appendix 2 to this report.

The LGA describes its draft as a “template code” and states that it has provided this “to assist authorities in thinking about how their new code of conduct should look.” However it remains the LGA’s view that “it is for each council’s locally elected members to decide what the right code will look like in their area”.

CLG describes its document as an “illustrative text” providing “an example of what a local authority’s code of Conduct for the new Standards arrangements might look like.”

Both documents are rather similar and are in very general terms. Although they describe broad principles, they give no clear indication, either for members or the public, about the behaviour expected or what exactly will comprise a failure to comply with the code.

It is suggested that neither draft is very satisfactory.

Members will recall that the Committee has previously expressed support for consistent Codes to be adopted by Authorities in the region. At a meeting of local Monitoring Officers in April, there was consensus that a "North East Region Code of Conduct" would be the best option to pursue, subject, of course, to the views of the members of each individual authority. A draft Code of Conduct based on the recommended version of such a code is attached at Appendix 3.

- 4.3 Unfortunately, at the time of preparation of the code, the draft regulations on Disclosable Pecuniary Interests (DPIs) were still not available (and indeed are not available at the time of writing) and therefore paragraph 12 and Annex 2 of the draft Code will need to be revisited when the regulations are published. If information about the DPIs is not issued in time by the Government, it may be necessary to invite June Council to voluntarily extend the operation of the existing code until the new Code can be finalised. (It may be that the transitional arrangements may provide for this to be the case in any event).
- 4.4 The Committee will see that Annex 3 to the draft Code of Conduct refers to Protocols adopted by the Council, which the Council has specifically declared should fall within the provisions of the Code of Conduct. It is suggested that the protocols which should be included in the lists are as follows:-

Protocol on Member / Employee Relations

Protocol for Members in relation to Development Control Matters.

Protocol on the use of Civic Cars

Protocol for Members in relation to Licensing Matters

Protocol for Members and Voting Co-opted Members – Use of Council Resources and Equipment

Guidance for Members in Relation to the Use of Council ICT Facilities

Protocol for Use of Member Websites

Remote intranet / Internet Access for Members

Protocol in Relation to Members' Business Dealings with the Council

Issue 2 – The Council has to decide what it will include in its Code of Conduct

Recommendation 2:

(a) That the draft North East Region Code at Appendix 3 be the basis of the new Code of Conduct to be recommended to Council for adoption, subject to the Monitoring Officer preparing a final

draft to be put to Council after taking into account the Government regulations on DPs and

(b)that the Protocols listed in paragraph 4.4 (as amended from time to time) be incorporated in the Code.

5 Dealing with Misconduct Complaints

5.1 'Arrangements'

The Act requires that the Council adopt 'arrangements' for dealing with complaints of breaches of the Code of Conduct both by Council members and parish i.e. Hetton Town Council members, and such complaints can only be dealt with in accordance with such 'arrangements'. They must therefore 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.

5.2 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 the Standards Committee and to the Monitoring Officer. The current procedures are somewhat cumbersome and it is proposed that the opportunity be taken to simplify the process and to give increased scope for informal resolution of complaints.

5.3 Decision whether to investigate a complaint

Members may wish 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 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. 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 make regular reports 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 also keep the Committee advised of progress on investigations and costs.

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. The criteria are set out in Appendix 4. It is suggested that the Monitoring Officer (and Standards Committee, where appropriate) should apply this criteria.

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, the current requirement is that this is reported to a Sub-Committee of the Standards Committee and the Sub-Committee 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 she 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 provide a summary report of each such investigation to the Standards Committee for information.

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 or 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 a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to a summary report for information being provided 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 to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and it can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

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

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. So, where a failure to comply with the Code of Conduct is found, the actions which the Council can take are

limited to its common law powers. Case law from before 2000, and a recent leading Counsel's opinion obtained by the Association of Council Secretaries and Solicitors (ACSeS) suggests the sanctions available comprise include the following –

- Standards Committee issuing a formal censure;
- Full Council, or the Town Council, issuing a formal censure;
- Referral of the Standards Committee findings to full Council, or to the Town Council, for information;
- Publication of the Standards Committee's findings by such means as it thinks fit;
- Council, or the Town Council, removing the member from any or all Committees or Sub-Committees for a specified period (subject to the approval of the member's Group if applicable);
- The Leader of the Council removing the member from the Cabinet, or from particular Portfolio responsibilities;
- The Council, or the Town Council, removing the member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated by the Council or by the Town Council;
- The Council, or the Town Council, offering training to the member; or
- The Council, or the Town Council, excluding the member from the Council's offices or other premises or facilities, for a specified period and to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member.

5.7 Appeals

There is no requirement to put in place any appeals mechanism against decisions of the Standards Committee. 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.

Whilst there is no requirement for an appeal mechanism, it is known that Newcastle City Council are considering including provision for a member aggrieved by an adverse finding against them to be allowed to ask for the finding and/or sanction to be referred to the Independent Person of another authority for review. The Independent Person would consider whether the finding or sanction was reasonable and if not, give reasons. If they thought the decision unreasonable, the Standards Committee would be required to meet again to reconsider its original verdict. The Committee may wish to consider incorporating such a proposal in its recommendations.

5.8 Confidentiality

In future, normal access to information and public access to meeting rules will apply to Standards Committee. It will thus be for the new

Standards Committee to decide on a case by case basis whether reports and proceedings should be public.

5.9 Written Procedures

Once members agree these suggested arrangements, or any variation thereof, it is proposed that the Monitoring Officer will prepare a written version of the arrangements, which will include a standard form of complaint and procedures for the investigation of complaints and the local determination of them. These will be based on the existing procedures with modifications to try to simplify the process whilst retaining all essential elements of fairness and transparency and also to address concerns that members have raised about the current process. For example, it is proposed that the usual practice will be that the Monitoring Officer will notify a member who is the subject of a complaint of the identity of the complainant and will provide the member with a copy of the complaint. The member will be invited to submit written representations as to whether or not the complaint should be investigated. Information regarding the identity of the complainant and details of the complaint will only be withheld from the member if the complainant is able to demonstrate exceptional reasons such as that the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed. It is proposed that the new Standards Committee be given delegated power by Council to approve such documentation and amend it from time to time as it thinks fit.

Issue 3 – The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a member is found to have failed to comply with the Code of Conduct.

Recommendation 3 –

- (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 the Monitoring Officer be given delegated power, after consultation with the Independent Person(s), 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, and to report regularly to Standards Committee on the discharge of this function;**
- (c) That in deciding whether a complaint should be investigated, the Monitoring Officer or Standards Committee as appropriate, take into account the criteria at**

Appendix 4 and that the Standards Committee be given delegated power to amend those criteria from time to time as it thinks appropriate.

- (d) Where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be authorised to close the matter (unless she considers it appropriate after consulting the Independent Person(s) to refer the findings to the Standards Committee to decide if a hearing is nevertheless called for), providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person(s), and reporting the findings to the Standards Committee for information;**
- (e) Where an 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 to the satisfaction of the complainant in appropriate cases, with a summary report for information to the Standards Committee. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to the Standards Committee for local hearing;**
- (f) That Council delegate to the Standards 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, such actions to include –**
- Issuing a formal censure by the Committee;**
 - Recommending to full Council, or to Hetton Town Council, the issue of a formal censure by the Council or by the Town Council;**
 - Referral of its findings to full Council, or to Hetton Town Council, for information;**
 - Publication of its findings by such means as the Committee thinks fit;**
 - Recommending to the Council, or to Hetton Town Council, that the member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable);**
 - Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;**
 - Recommending to the Council, or to Hetton Town Council, that the member be removed from all outside appointments to which she/he has been appointed or nominated by the Council or by Hetton Town Council;**

- **Instructing the Monitoring Officer to, or recommending that Hetton Town Council, offer training to the member; or**
 - **Recommending to the Council, or to Hetton Town Council, that it exclude the member from the Council's offices or other premises or facilities, to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member;**
 - **Such other recommendations as the Committee may think appropriate**
- (g) That the Committee decide whether to recommend that**
- (i) there be no provision for appeal against any of the decisions or determinations referred to above or**
 - (ii) provision be included for a member who is aggrieved by a finding of the Standards Committee that he or she has failed to comply with the Code of Conduct and /or by a sanction imposed by the Committee, to have a right to request a review by an Independent Person of another local authority whose views, if critical of the original finding or sanction imposed, will result in the Standards Committee being required to reconsider its original decision. The Monitoring Officer be authorised to arrange with one of the Council's neighbouring authorities that one of its Independent Persons be made available for this purpose.**
- (h) That the Monitoring Officer in due course prepare a written version of the agreed Arrangements for publication, to include a template Form of Complaint and procedures to be followed for any investigation or local determination of a complaint and that the new Standards Committee be given delegated power to adopt and amend those procedures from time to time as it thinks appropriate.**

6. The Register of Members' Interests

- 6.1** In previous reports, members were advised that the Act abolishes the concepts of personal and prejudicial interests. Regulations will define DPIs and the Monitoring Officer must keep a Register which must include any DPIs, as well as any other interests which the Council decides should be registered under its code of conduct.

The intention was to simplify the registration requirements, but in fact the Act extends the requirement for registration of DPIs to cover not

just a member's own interests, but also those of the his/her spouse or civil partner, or someone living with him/her in a similar capacity.

The register must be available for public inspection and on the Council's website.

- 6.2 The Monitoring Officer must also maintain and similarly publish a register for Hetton Town Council and provide it with the information to enable it to put the current register on its own website. There is no provision for the City Council to recover any costs from the Town Council for doing this.

Failure to register all DPIs within 28 days of becoming a member is a criminal offence, but will not prevent the member from still acting as a member. It will be a criminal offence for a member, without reasonable excuse, to breach the statutory requirements of the registration and disclosure of DPIs, as will knowingly or recklessly providing false or misleading information in relation to such interests. Any prosecution requires the consent of the Director of Public Prosecutions. On conviction, a member may be fined and/or disqualified for up to five years.

- 6.3 The proposed Code of Conduct at Appendix 3 provides for other interests to be registered. Failure to register these interests would not be a criminal offence, but would be a breach of the Code.
- 6.4 Whilst under the Act there is no continuing requirement on a member to keep the register up to date, except on re-election or re-appointment, the draft Code at Appendix 3 makes provision for this.

Issue 4 – Preparation of the Registers

Recommendation 4 –

- (a) That the Monitoring Officer prepare and maintain a new register of members' interests to comply with the Act and 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 are informed of their duty to register interests;**
- (c) That the Monitoring Officer prepare and maintain a new register of members' interests for Hetton Town Council to comply with the Act and any Code of Conduct adopted by Hetton Town Council and ensure that it is available for inspection as required by the Act.**

7. Disclosure of Interests and Withdrawal from Meetings

- 7.1 If a member has already registered a DPI, or sent off a request to the Monitoring Officer to register it (a "pending notification") he or she is not required by the Act to declare it at any meeting where that DPI

becomes relevant (although the member is precluded from taking part in the discussion or vote).

Under the Act, it is only where the DPI is not registered, or subject to a pending notification, that a formal declaration must be made at the meeting. The Council could however, through the Code, require all interests (i.e. both DPIs and other interests) to be declared, even if registered, so that there is a public record of the interest in relation to a specific item of business. Subject to seeing the DPI regulations, it is suggested that such provision would be appropriate and the proposed Code has been drafted accordingly.

- 7.2 Where a member does make a disclosure of a DPI, they must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 7.3 If a member has a DPI in any matter, they must not participate in any discussion of the matter at the meeting or vote on it (unless a dispensation has been obtained). (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).

However, the Act does not require the member to leave the meeting.

- 7.4 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers, or where the member is a Ward Councillor and the Council choose to delegate powers to Ward Councillors.
- 7.5 The Act provides that, when a member becomes aware that they will have to deal with a matter and that they have a DPI in that matter –
 - 7.5.1 unless the DPI is already entered in the register of members’ interests or is subject to a “pending notification”, they have 28 days to notify the Monitoring Officer that they have such a DPI; and
 - 7.5.2 they must take no action in respect of that matter other than to refer it to another person or body to take the decision.
- 7.5 It should also be noted that under the Act it is also made an offence for an individual Cabinet Member to exercise any delegated power to make an executive decision on a matter in which they have a DPI.
- 7.6 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs.

A requirement to withdraw from the meeting could be covered by Standing Orders, with a specific requirement in the Code that the member must comply with that Standing Order. Members may feel

that it would be appropriate to voluntarily adopt such a requirement and the draft Code makes provision for this.

Issue 5 – What Standing Order should the Council adopt in respect of withdrawal from meetings for interests?

Recommendation 5 – The Council be recommended to adopt a Standing Order which equates to the current Code of Conduct 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 or she has a DPI, except where permitted to remain as a result of a dispensation.

8. Sensitive Interests

- 8.1 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 or 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 them being subject to violence or intimidation, they 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.

9. Dispensations

- 9.1 The provisions on dispensations are significantly changed by the Localism Act.

- 9.2 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –

9.2.1 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

- 9.2.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.
- 9.3 In future, a dispensation will be able to be granted in the following circumstances –
- 9.3.1 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;
- 9.3.2 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.
- 9.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- 9.3.4 That, without a dispensation, no member of the Cabinet would be able to participate on this matter
- 9.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 9.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 9.5 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 the Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 9.3.1 and 9.3.4 are reasonably 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 9.3.2, 9.3.3 and 9.2.5 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee.

Issue 6 – What arrangements would be appropriate for granting dispensations?

Recommendation 6 – That Council delegate the power to grant dispensations –

- (a) on the Grounds set out in paragraphs 9.3.1 and 9.3.4 of this report to the Monitoring Officer with an appeal to Standards Committee, and

(b) on Grounds 9.3.2, 9.3.3 and 9.3.5 to the Standards Committee.

10. Recommendations

10.1 The Committee is requested to consider the matters set out in this report and make appropriate recommendations to Council.

Proposed Terms of Reference for Standards Committee

1. to promote and maintain high standards of conduct by councillors and co-opted members;
2. to assist the councillors and co-opted members to observe the Members' Code of Conduct;
3. to advise the Council on the adoption or revision of the Members' Code of Conduct;
4. monitoring the operation of the Members' Code of Conduct;
5. to advise, train or arrange to train councillors and co-opted members on matters relating to the Members' Code of Conduct;
6. to grant dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct so far as not delegated to the Monitoring Officer;
7. to assist and advise Hetton Town Council, if requested and as appropriate, in relation to the discharge of functions 1-6 above in respect of Hetton Town Council.
8. to deal with written allegations that a councillor or co-opted member (or former councillor or co-opted member) of the Council or Hetton Town Council has failed, or may have failed, to comply with the Members' Code of Conduct.
9. to deal with complaints that a councillor or co-opted member has failed, or may have failed, to comply with one of the Council's local protocols
10. to adopt and amend procedures to be followed for investigations and local determination of complaints.
11. to monitor the operation of the Council's Anti-Fraud and Corruption Policy so far as it relates to the action of members and co-opted members.
12. to consider reports of the Monitoring Officer and of the Local Government Ombudsman where they concern the conduct of members of the Council.
13. to support the Monitoring Officer in his / her role.
14. to report on the above matters to the Council.

Appendix 2

A. LGA Template

As a member or co-opted member of *[X authority]* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in *[X authority]* this will be done as follows: *[to be completed by individual authorities]*

As a Member of *[X authority]*, my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the *[county][borough][Authority's area]* or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

B. CLG Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest

as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

**Draft Code of Conduct
(Based on the North East Region Draft Code of Conduct for Members)**

The Council of the City of Sunderland (“the Council”) has adopted the following code which has effect from 1 July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council but is not one of its elected members

The code is intended to be consistent with Nolan’s Seven Principles of Public Life, and should be read in the light of those principles, namely that Council Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

General Conduct

1. You must treat others with respect, including Council officers and other elected members.
2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence or attempt to intimidate or improperly influence any person who is involved in any complaint about any alleged breach of this code of conduct.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected members or co-opted

members and which the Council has specifically declared should fall within the provisions of this code of conduct and which is listed in the annex to this Code.

7. When using or authorising the use by others of the resources of the Council, you must act in accordance with the Council's reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - You have the consent of a person authorised to give it; or
 - You are required by law to do so; or
 - The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Council which is subsequently subject to scrutiny by an overview and scrutiny committee of the Council, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Council in order to reach a view as to its merits or effectiveness.

Registration of Interests

11. Subject to paragraph 13, you must register in the Council's Register of Members' Interests information about your personal interests. In this code of conduct 'your personal interests' means:
 - (a) any 'Disclosable Pecuniary Interest' (as defined by regulations made from time to time by the Secretary of State) which you know about and which is held by
 1. you, or
 2. your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners;and

(b) any other interests held by you as set out in paragraph 12.

(Note: A list of Disclosable Pecuniary Interests as currently defined by regulations is set out in Annex 2)

You must register information about your personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Council; and
- any change taking place in your personal interests.

(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

12. The following are personal interests for the purposes of paragraph 11(b):

- Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Council;
- Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);
- Any business which you are involved in carrying on;
- Any partnership of which you are a partner;
- Any employer for whom you work;
- Any contract for goods, services or works between the Council and you or any firm of which you are a partner or any company of which you are a remunerated director or in which you hold shares with a value exceeding £25,000 or 1% of its issued share capital;
- Any person (other than the Council) who has made a payment to you in connection with you carrying out your duties as a Council Member;
- Any land in the Council's area in which you have a beneficial interest or a licence to occupy;
- Any land owned by the Council of which you are the tenant or licensee;
- Any person from whom you have received the offer of a gift or hospitality with an estimated value of more than £25 (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Council.

[Reminder: The above list will need to be reviewed once regulations defining Disclosable Pecuniary Interests are published]

13. Where you think that disclosure of the details of any of your personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, you may inform the Monitoring Officer; and if the Monitoring Officer agrees, a note will be made in the Register to the effect that you have a personal interest, details of which are withheld under Section 32 of the Localism Act 2011.

Declaration of Interests

14. Where you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that any of your personal interests are relevant to an item of business which is being considered, then unless the interest is one which has been noted under paragraph 13, you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
15. Where you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that a decision in relation to any item of business which is to be transacted might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a person described in paragraph 16 to a greater extent than most inhabitants of the area affected by the decision, then you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
16. The persons referred to in paragraph 15 are:
- (a) a member of your family;
 - (b) any person with whom you have a close association;
 - (c) in relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.
- (Note:
- “A member of your family” means: your partner (i.e. your spouse, civil partner or anyone with whom you live in a similar capacity); your parent or parent-in-law; any child, stepchild or sibling of you or your partner; your grandparent, grandchild, aunt, uncle, nephew or niece; and the partners of any of those people.
 - You will have a “close association” with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour or disadvantage that person when deciding a matter which affects them)

17. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered at that meeting, you may not (unless you have a relevant dispensation granted under section 33 of the Localism Act 2011) :
- participate (or further participate) in any discussion of the matter at the meeting; or
 - participate in any vote (or further vote) taken on the matter at the meeting.
18. If a function of the Council can be discharged by you as a member acting alone and you are aware you have a Disclosable Pecuniary Interest in any matter to be dealt with by you in the course of discharging that function, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).
- (Note: Failure, without reasonable excuse, to comply with paragraph 17 or 18 is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)
19. You must comply with any standing order adopted by the Council which requires Members to leave the room during any meeting at which a matter in which they have a Disclosable Pecuniary Interest is being discussed.

Annex 1 to Code of Conduct

Nolan's Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Annex 2 to Code of Conduct

Disclosable Pecuniary Interests

[To be inserted once regulations defining DPIs are published]

Annex 3 to Code of Conduct

Associated Protocols

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

Protocol on Member / Employee Relations

Protocol for Members in relation to Development Control Matters.

Protocol on the use of Civic Cars

Protocol for Members in relation to Licensing Matters

Protocol for Members and Voting Co-opted Members – Use of Council Resources and Equipment

Guidance for Members in Relation to the Use of Council ICT Facilities

Protocol for Use of Member Websites

Remote intranet / Internet Access for Members

Protocol in Relation to Members' Business Dealings with the Council

Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer (or the Standards Committee if appropriate) that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

- 2. Is the complaint about someone who is no longer a member of the Council, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?**

If yes:

The complaint will be referred to the monitoring officer of that other authority to consider.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

- 6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:

Further action will not normally be warranted.

- 7. Is the complaint anonymous?**

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.