

**LOCALISM ACT 2011 – THE AMENDED STANDARDS REGIME**

**REPORT OF THE HEAD OF LAW AND GOVERNANCE AND MONITORING OFFICER**

**1 Introduction**

- 1.1 At its meeting in November 2011, the Committee received an update on the provisions in the Localism Act 2011 (the Act) regarding the new standards regime.

The purpose of this report is to outline the changes to the regime and recommend proposals in respect of the recruitment of “Independent Persons”, as required by the Act.

Although Standards for England will cease to exist on 31 March 2012, the Government has indicated that other parts of the existing standards regime will remain in place until the end of June. Their current intention is that the new legislative provisions will come into force on 1 July 2012 and therefore it will be necessary for the Council to ensure that appropriate arrangements are in place in readiness for the implementation date.

- 1.2 The new system has some mandatory elements, but also much more scope for local discretion as to what arrangements are put in place. An overview of the new provisions is set out below.

**2. Overview of Provisions**

- 2.1 The Council will be under a statutory duty to promote and maintain high standards of conduct by its members and co-opted members.
- 2.2 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 (when viewed as a whole) with the following seven 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. Further than that, there is no guidance on the content of the code of conduct and the Government is not issuing a “model” code for adoption by authorities.

Members will no longer be required to give a formal undertaking to comply with the code.

- 2.3 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. Alleged failures to comply with the code can only be dealt with under these arrangements, and in no other way. There is no legislative requirement to have a “Standards Committee”, however, as there is need to have the means to consider complaints and it would be more appropriate for this function to be undertaken by a panel of members rather than officers, the Council will need to decide whether to continue to have a separate Standards Committee, or whether to arrange for this function to be undertaken by another committee of members. The arrangements for investigating complaints can be whatever the Council chooses except that they must include the appointment by the Council of at least one “Independent Person”.
- 2.4 The Independent Person must be recruited through public advertisement and approved by a majority of Council members. Existing independent members of the Standards Committee will be ineligible, because the Act excludes from this role any person who has been an elected member, co-opted member or officer of the Council in the previous 5 years.

The Independent Person’s role is to give a view on any alleged breach of the code, if asked by either the Council or any member who is the subject of a complaint. The Council must ask for the Independent Person’s views before finally determining an allegation it has investigated.

- 2.5 The existing statutory sanctions for a breach of the code of conduct are abolished. There will therefore be no scope for the partial or total suspension or disqualification of a member. The Council will be limited to its common law powers, which essentially are (i) formal censure (ii) publication of the breach (in whatever way it might choose) (iii) removing a member from a particular committee and (iv) asking the member to undergo training.
- 2.6 The Monitoring Officer must maintain a Register of Members’ Interests. This will be a new register, not the continuation of the existing one, and (subject to the provisions referred to in next paragraph) it is for the Council to decide what must be included in it. It must be published on the Council’s website, and be available for inspection at all reasonable times.
- 2.7 The concepts of “personal” and “prejudicial” interests are discontinued. Disclosable Pecuniary Interests (“DPIs”), which will be defined in Regulations, must be notified to the Monitoring Officer for entry on the Register within 28 days of becoming a member. The draft regulations regarding DPIs are not yet available but it is known that the definitions will apply not only to a member’s own interests, but also to those of their spouse, civil partner, or other person with whom the member is living as if they were spouses or civil partners, so long as the member is aware that their spouse (etc) has such an interest.

Apart from DPIs, it is for the Council to decide what other interests should be registered. The Act does not require members to keep register entries up to date.

Sensitive interests can be withheld from public access to the Register, but only where there is a danger of violence or intimidation.

- 2.8 If a member is present at a meeting at which they have a DPI in any matter under consideration and the interest has not been registered, they must disclose the interest. He or she must then register it with the Monitoring Officer within 28 days. If the interest is already registered, the Act does not require the Member to declare it at the meeting.
- 2.9 A member who has a DPI in any item of business at a meeting must not take part in the debate, nor vote, unless they have obtained a dispensation. There is no legal requirement to leave the room.
- 2.10 There is a more generous regime for the granting of dispensations for members to speak and vote where they have a DPI. At present, the grounds for a dispensation for a prejudicial interest are very limited. In future, members may be given a dispensation either to speak but not vote, or to speak and vote, on several grounds, including that it would be in the interests of local people to allow a dispensation, or even that it is simply "appropriate to grant a dispensation". Dispensations may last for up to four years.
- 2.11 It will be a criminal offence for a member, without reasonable excuse, to breach the statutory requirements on 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.
- 2.12 Finally, Parish Councils will also have a duty to promote and maintain high standards of conduct by their members and to adopt a code of conduct for them (although they can if they choose simply adopt the code of the District Council). There must also be a Register of Interests for the members of each Parish Council.

Importantly however:

- A Parish Council is not required to have any arrangements to deal with any allegations that one of its members is in breach of its code of conduct. Instead, the District Council's arrangements must also cover such allegations and make provision for them to be investigated and decided upon by the District Council.
- The District Council's Monitoring Officer is made responsible for maintaining and publishing the Register of Interests for Parish Councils.
- The role of the Independent Person includes giving a view on any alleged breach of the code if asked by any parish councillor who is the subject of a complaint

### **3. Next Steps**

- 3.1 It is clear that there are a number of issues to consider and arrangements to be put in place in order to be ready to implement a new regime from 1 July.

It is however difficult to finalise matters in the absence of the draft regulations defining DPls.

- 3.2 Committee members previously expressed support for the principle of seeking, if possible, to adopt a code of conduct which is consistent with those adopted by neighbouring authorities.

It is therefore proposed that further discussions be held with the Monitoring Officers of those authorities before detailed recommendations are submitted to the Council. In addition, a meeting between standards committee chairs is being convened by Newcastle Council in order to discuss the way forward.

It is hoped that the draft regulations will be issued in sufficient time for a special meeting of the Standards Committee to be convened in order for it to be consulted on the detailed recommendations, prior to determination of the way forward by the full Council.

- 3.3 In the meantime, it is considered that there is merit in progressing arrangements to recruit Independent Persons. It is recommended that it would be sensible to appoint two such persons, to cover the situation that would arise should any complaint be referred to the Council and one Independent Person be unable to act for any reason (e.g. due to illness or a conflict of interest). It is proposed that the Independent Persons be appointed for a maximum of five years (two years initially, with scope for the Council to extend the appointment for a further three years without re-advertising). A draft role description is shown in the Appendix to this report.
- 3.4 As the Independent Persons will not be members of the Council, their remuneration falls outside the remit of the Independent Remuneration Panel. It is therefore proposed that the Head of Law and Governance, in consultation with the Executive Director of Commercial and Corporate Services, be authorised to set the initial allowance and expenses. (This function could subsequently be delegated to whichever committee the Council determines will deal with standards issues).
- 3.5 It is also recommended that shortlisting of candidates is undertaken by a panel comprised of the Chair of the current Standards Committee plus three other committee members, which will make recommendations to full Council regarding the appointments.

#### **4. Recommendations**

- 4.1 That the Standards Committee recommend to Council

- 4.1.1 that there be two Independent Persons appointed
- 4.1.2 that the appointments be for two years, but with provision to extend for a further three years without re-advertisement
- 4.1.3 that 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

- 4.1.4 that 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.

## **Background Papers**

Localism Act 2011

## Appendix

### **Role Description for Independent Persons appointed by Sunderland City Council for Standards of Conduct Issues affecting City Council and Hetton Town Council Members**

1. The City Council is to appoint two individuals to carry out the role of "Independent Person", which is a new role created under Section 28(7) of the Localism Act 2011. The Council has a duty under that Act to promote and maintain high standards of conduct for its elected and co-opted members and to make arrangements for the consideration of complaints of breaches of its members code of conduct. The Council has yet to determine its arrangements for the undertaking of these responsibilities but it is likely that they will be delegated to a committee of elected members.
2. The statutory role of the Independent Person arises where the Council has received an allegation that one of its members (or a member of Hetton Town Council) has breached the Council's Code of Conduct for Members (or the relevant Town Council's code of conduct).

In those circumstances:

- (a) if the Council decides to investigate the allegation, the Council **must** consult the Independent Person, and take their views into account, before making a decision on that allegation; and
  - (b) the Council **may** seek the views of the Independent Person about any other aspect of the allegation, whether or not it decides to investigate; and
  - (c) the member of the Council (or Hetton Town Council) who is the subject of the allegation **may** also seek the views of the Independent Person at any time.
3. When a complaint has been investigated, the Independent Person will receive a copy of the investigation report from the Council and be asked for his or her view on it and any views he or she may have upon how the Council should determine the allegation. These views will then be taken into account in the final decision making process. The final decision may be made by the Monitoring Officer where the investigation has concluded that there has been no breach of the Code, but otherwise is likely to be made by a committee of elected members after a hearing.
  4. The views of the Independent Person may be sought by the Council at other stages in the process, for instance by the Monitoring Officer to assist in deciding whether a complaint could be resolved informally.
  5. It is envisaged the views of the Independent Person will usually be sought by the Council (through its Monitoring Officer) in writing, either by letter or e mail, and that the response of the Independent Person will usually be conveyed in the same way. On occasions however advice may be sought by telephone or at a meeting.

Any Independent Person is likely to be expected to attend any hearing which is held by the Council to decide whether there has been a breach of the Code of Conduct. If it is decided at that hearing that there has been a breach, the Independent Person will be asked for his or her view as to what action, if any, should be taken as a result.

6. As part of the statutory role, the Independent Person will also be available for consultation by any Council (and Hetton Town Council) member who is the subject of an alleged breach of the Code of Conduct. Such consultation may be sought at any time during the process and may be carried out by telephone, written correspondence (e mail or letter) or at a meeting (including at a final hearing).

(This advisory role to an individual Council member will only arise where the member is subject to an alleged breach of the relevant code of conduct. An Independent Person will not be expected – and should decline - to give advice to Council or Hetton Town Council members in any other circumstances. Where such advice is required, Council members will be expected to seek it from the Monitoring Officer, or some other appropriate Council officer).

7. In addition to this statutory role, the Independent Person may from time to time be asked for his or her views about other aspects of the Council's standards arrangements, for instance the suitability of the Council's Code of Conduct or the procedures which the Council adopts for the handling of any allegations of member misconduct. The Independent Person may be invited to attend committee meetings for this purpose.
8. An Independent Person will be encouraged to acquire some understanding of the work of the Council and how it operates. Support will be provided by the Council's Monitoring Officer, who will arrange any necessary training and the provision of such information which is considered necessary to enable the Independent Person to perform the role properly.