



Leicester
City Council

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

STANDARDS COMMITTEE (INFORMAL DISCUSSION)
STANDARDS COMMITTEE
EXECUTIVE?
COUNCIL

7TH MARCH 2012
10TH MAY 2012
JUNE
JUNE

IMPLEMENTATION OF NEW STANDARDS ARRANGEMENTS

Report of the Monitoring Officer

1. PURPOSE OF REPORT

- 1.1. To inform the Committee and thereafter the Executive and Council of the new standards arrangements that the Council is required to put in place following the coming into force of the Localism Act 2011.
- 1.2. This report is initially being circulated as a draft for discussion purposes at the 7th March Standards Committee meeting.

2. RECOMMENDATIONS

- 2.1. That the Standards Committee consider this report to enable the Monitoring Officer to produce a final report for consideration by the Committee's May meeting.

3. REPORT

- 3.1. The Localism Act 2011 (the "Act") received Royal Assent on 15th November 2011. It is the Coalition Government's flagship piece of legislation in relation to local government. Amongst other things the Act has the effect of dismantling the existing "ethical standards framework" established by the Local Government Act 2000. Once the Act has been brought into force it will mean that:
 - A duty is placed on the Council to ensure that all members and any co-opted members maintain high standards of conduct.
 - The Council will be required to adopt a code of conduct which is consistent with the Nolan Principles relating to standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

- Require the Council to put in place new arrangements for investigating and taking decisions on complaints that relate to members.
 - A criminal offence is created dealing with the requirement that members will have of registering in the members' register of interests all discloseable pecuniary interests.
- 3.2. The Act abolishes Standards for England. Its regulatory function ceased on 31st January. Final abolition takes place on 31st March.
- 3.3. The Government have indicated that the new standards arrangements will come into effect on 1st July. Originally this date was to have been 1st April. The Government though have recognised that introduction of these provisions in such a short timescale would be problematical for local authorities.
- 3.4. The new date, though, of 1st July means that apart from abolition of Standards for England all the remaining local elements of the current standard's regime now remain in force until 30th June. On this basis it is recommended that the Council's existing standards arrangements are kept in place until 30th June. Annual Council (Democratic Services Officer checking if this is required) at its meeting in May will be asked to continue the existing membership of the Standard's Committee and that the current independent members of the Standards Committee will retain their positions until 30th June.

Retaining the Standards Committee

- 3.5. Under the Localism Act there will no longer be a requirement for a Standards Committee. As though there will still be a need to deal with standards issues it will be necessary to retain a committee to deal with this and the recommendation is that a standing Standards Committee will be required. Any new Committee will no longer be required to have any independent members. The current co-opted independent members will cease to hold office. A new category of "independent Persons" is created by the Localism Act. A Counsel's opinion has been obtained by the Association of Council Secretaries and Solicitors (ACSeS) that confirms that existing independent members will not be able to be reappointed as independent persons.
- 3.6. There will be changes to the composition of any new Standards Committee. The political balance provisions will apply but the current restriction that only allows one member of the executive to serve on the Committee will no longer be applicable. Revised terms of reference though will be required. The optimum size in terms of membership will also need to be considered.

A new Code of Conduct

- 3.7. The Council will be required to have a new code of conduct which will have to be consistent with the 7 principles of public life adopted by the former Nolan Committee (see previous). The Council had a discretion as to what to include within its new code of conduct provided it is consistent with the 7 principles. It would seem that the starting point of any new code will be the first part of the Councils current code. The details though in the second part of the code (dealing with interests) and the third part (dealing with registration of members interests) need to take into account the new provisions of the Localism Act.
- 3.8. The Act refers to, amongst other things, "discloseable pecuniary interests" (DPI's). These are likely to be the subject of further regulations which the Government have yet to publish.

It is considered likely that these DPI's broadly will equate to current prejudicial interests. The provisions of the Act also require the Council's code to contain appropriate requirements for the registration and disclosure of other pecuniary interests and non-pecuniary interests. The result means that at this stage it is not possible to draft code provisions that reflect the definition of DPI's.

- 3.9. It is likely that ACSeS in consultation with the Local Government Association are likely to circulate a standard draft code of conduct. The Monitoring Officer will liaise with colleagues in authorities in Leicestershire and Rutland with a view to ensuring that wherever possible any new final code adopted by the City Council is consistent with codes being adopted in neighboring authorities.

Investigation and decisions on allegations of failure to comply with the code of conduct

- 3.10. The Council will need to have arrangements for this. Under the Act this must include the appointment of at least one "independent person" whose view must be sought before a decision is taken on any allegation which has been investigated. The independent person may also be involved at other stages of dealing with allegations by either the Council or any member who is the subject of any complaint.
- 3.11. One early issue that has been picked up by other local authorities is that it is likely that one independent person for an authority the size of Leicester is probably not going to be sufficient. By way of an example the opportunity for the independent person to express a view would make it difficult if there was only one independent person and both "sides" to any dispute wished to consult.
- 3.12. Independent persons are to be appointed following public advertisement and so the appointment process will be similar to the process that has been adopted with regard to the appointment by the Council of the current independent members.
- 3.13. In terms of numbers of independent persons it is suggested to avoid the problem of conflict of interest arising that three people be appointed.
- 3.14. The point has been made above with regard to the fact that current independent members may not be the future designated independent person. Note, however, that current independent members would not appear to be excluded from being appointed to the role of designated independent person in any neighboring authority. It is understood that the other district councils in Leicestershire are moving towards appointing a pool of approximately 6-10 independent persons to be available on a County wide and Rutland basis.
- 3.15. With regard to the issue of any payment of allowances to the Independent Person, it is important to note that the individual concerned will not be a member of the Council. Therefore any remuneration level will not come within the scheme of members allowances and so can be determined without reference to the Council's independent remuneration panel. In terms of setting any remuneration the role is substantially different to that undertaken by current independent members. While the Independent Person may be invited to attend future meetings of the Standards Committee, they will not be able to chair the meeting. It is suggested that, before any final decision is taken on any remuneration, consideration is given to the function and its likely role in the Leicester context.

Dealing with misconduct complaints

- 3.16. The Act requires that the Council adopts “arrangements” for dealing with complaints of breaches of its code of conduct. These arrangements will need to set out in detail the process for dealing with complaints of misconduct and the action which may be taken against any member who is found to have failed to comply with the code.
- 3.17. The Council will no longer be required to have an Assessment Sub-Committee or a Review Sub-Committee. It is suggested that parts of the existing standards regime operated by the Council are retained, eg complaints about member conduct should continue to be made in writing to the Monitoring Officer. It is also suggested that advantage is taken of the new flexibility to delegate to the Monitoring Officer the initial decision as to whether or not any complaint requires investigation (subject to consultation with the independent person). Delegation could be total or in certain circumstances require the Monitoring Officer to report to the Standards Committee for the Committee to take a decision as to whether or not a complaint should be investigated. This might apply where the Monitoring Officer has already advised the member in relation to the issues that are the subject of the complaint or the complaint is particularly sensitive or it relates to a senior member.
- 3.18. Delegation to the Monitoring Officer would also enable the Monitoring Officer to seek to try and resolve a matter informally before taking any decision on whether the complaint should be the subject of any formal investigation.
- 3.19. Appropriate checks and balances would need to be put in place with regard to delegation to the Monitoring Officer and it is envisaged that the Monitoring Officer would report back to the future Standards Committee say on a quarterly basis indicating the action(s) he/she had taken.

Possible Complaint outcomes

- 3.20. The Act does not give any power to impose current sanctions available such as suspension or a requirement for training or the giving of an apology. So under the new regime, where a failure to comply with the code of conduct has been found, the sanctions available that the Council can take are limited and must be directed to securing the ability of the council to continue to discharge its functions effectively – the focus is no longer “punishment” of the member concerned. Possible sanctions that will be available will include
- To Report on findings to full Council i.e. “naming and shaming”.
 - Recommendation to a group leader that the member concerned be removed from any committee or sub-committee. For non-group members this decision would be one for full Council.
 - In relation to any members of the executive a recommendation to the City Mayor that the member concerned be removed from the Executive.
 - Instructing the Monitoring Officer to arrange appropriate training for the member concerned.
 - Recommendation of removal of any member concerned from any outside body appointments.

- Withdrawal of Council facilities e.g. use of computer or internet.
- Excluding a member from the Council's offices or other premises except for the purpose of attending formal meetings.

3.21. The Act does not require any arrangements to put into place any appeals mechanism against any future member code of conduct breach decisions (this would not stop the Council having an internal appeals mechanism). This means that any decision taken by the Standards Committee or Monitoring Officer would be open to Judicial Review either on the basis that the decision taken was unreasonable or was taken improperly or sought to impose a sanction which the Council had now power to impose.

Registration of members interests

- 3.22. Under the Act the Monitoring Officer will be required to establish and maintain a register of members' interests. It will be for the Council to determine what information should be provided as long as it complies with the Act.
- 3.23. As with the current register, the Monitoring Officer will be required to ensure that the register is available for inspection by the public and is published on the Council's website. It will be possible to omit any information that is deemed to be sensitive, for example could lead to a member being subjected to violence or intimidation.
- 3.24. The Act abolishes the concept of personal and prejudicial interests but as indicated above replaces them by "Discloseable Pecuniary Interests". As also mentioned previously this is yet to be defined by Regulations. It is being suggested that these will be broadly similar to the current Prejudicial Interests.
- 3.25. Within 28 days of taking office a member will be required to notify the Monitoring Officer of any disclosed pecuniary interests belonging to themselves and where know of their spouses or civil partners or someone living with the member in a similar capacity.
- 3.26. Registration of any other pecuniary or non pecuniary interests will also be required.

Disclosure of interests at meetings

- 3.27. Where a member is present at any Council meeting or is being asked to discharge a function alone or is discharging a function in any way and the matter involves the discloseable pecuniary interest that the member has previously registered, then the member concerned may not participate or vote on the matter and must withdraw from the meeting. The only exception will be if the member has a dispensation. If the interest has arisen but is not already entered on the register, the member concerned should disclose the interest to the meeting (provided it is not sensitive) and thereafter provide notification of the interest to the Monitoring Officer but in 28 days so it can be included in the register of interests.
- 3.28. In a change from the current requirements where a member has registered a DPI s/he need not make a declaration about the interest at the start of any meeting.

Offences

- 3.29. It is an offence without reasonable excuse to fail to provide notification of a discloseable pecuniary interest; fail to disclose an interest not registered; participate or vote when prohibited; and knowingly or recklessly providing information within the notification which is false or misleading. Prosecution can only be brought by or on behalf of the Director of Public Prosecutions and on conviction the court may impose a fine (£5k) and/ or disqualify the member from office for up to five years.

Sensitive interests

- 3.30. The Act effectively re-enacts the current code of conduct provisions in this regard. So where a member is concerned that disclosure of the detail of their interest (either a discloseable pecuniary interest or any other interest which the member will be required to disclose) at a meeting or on the register of members interests would lead to the member or any person connected with him/her being subject to violence or intimidation, then s/he may request the Monitoring Officer to agree that the interest is "sensitive". If the Monitoring Officer agrees the member then really has to disclose the existence of the interest rather than the detail of it at any meeting and in terms of what is registered the Monitoring Officer can exclude the detail from the published version of the register of members' interests.

Dispensations

- 3.31. The Localism Act makes some significant changes to the current provisions of dispensations. Under the Act a dispensation will be available 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".
 - That without the dispensation the representation of different political groups on the decision making body transacting the business would be so upset as to alter the outcome of any vote on the matter.
 - That the Council considers that the dispensation is in the interests of the persons living in the Council's area.
 - That the Council considers that it is otherwise appropriate to grant a dispensation.
- 3.32. Any grant of dispensation will be for a specified period but in any event can only last for up to a maximum of four years. Previously dispensations were given by the Standards Committee but under the Act there is discretion for the power to be delegated not only to a Committee, but also to a sub-committee or the Monitoring Officer.

Transitional arrangements

- 3.33. Regulations are anticipated to govern the period following cessation of referral of complaints to Standards for England to the start of the new arrangements in the Council.
- 3.34. It is appreciated that this report contains quite a lot of detail but that in turn a lot of detail is not yet available as it requires Regulations that the government have yet to issue or consult on.

3.35. The new regime required by the Localism Act will include:

- A new code of conduct.
- New arrangements for dealing with complaints about potential breaches of the code of conduct
- A new register of members' interests will be required.
- The Council will need to recruit new independent persons.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1. Financial Implications

None

4.2. Legal Implications

The Council has to put in place the appropriate arrangements in order to comply with the provisions of the Localism Act 2011 in relation to standards issues.

4.3. Climate Change Implications

None

5. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/ NO	Paragraph/References Within the Report
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	
Corporate Parenting	No	
Health Inequalities Impact	No	

6. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

6.1. Previous reports / discussion at the Standards Committee

7. **CONSULTATIONS**

7.1.

8. **REPORT AUTHOR**

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