

Standards Committee

Monday 26th March
2012
7.00 pm

Committee Room2
Town Hall
Redditch



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- In addition, the public now has a right to be present when the Council determines “Key Decisions” unless the business would disclose confidential or “exempt” information.
- Unless otherwise stated, all items of business before the Executive Committee are Key Decisions.
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**If you have any queries on this Agenda or any of the decisions taken or wish to exercise any of the above rights of access to information, please contact
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Welcome to today's meeting.

Guidance for the Public

Agenda Papers

The **Agenda List** at the front of the Agenda summarises the issues to be discussed and is followed by the Officers' full supporting **Reports**.

Chair

The Chair is responsible for the proper conduct of the meeting. Generally to one side of the Chair is the Committee Support Officer who gives advice on the proper conduct of the meeting and ensures that the debate and the decisions are properly recorded. On the Chair's other side are the relevant Council Officers. The Councillors ("Members") of the Committee occupy the remaining seats around the table.

Running Order

Items will normally be taken in the order printed but, in particular circumstances, the Chair may agree to vary the order.

Refreshments : tea, coffee and water are normally available at meetings - please serve yourself.

Decisions

Decisions at the meeting will be taken by the **Councillors** who are the democratically elected representatives. They are advised by **Officers** who are paid professionals and do not have a vote.

Members of the Public

Members of the public may, by prior arrangement, speak at meetings of the Council or its Committees. Specific procedures exist for Appeals Hearings or for meetings involving Licence or Planning Applications. For further information on this point, please speak to the Committee Support Officer.

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Do Not stop to collect personal belongings.

Do Not use lifts.

Do Not re-enter the building until told to do so.

The emergency Assembly Area is on Walter Stranz Square.

Declaration of Interests: Guidance for Councillors

DO I HAVE A "PERSONAL INTEREST" ?

- Where the item relates or is likely to affect your **registered interests** (what you have declared on the formal Register of Interests)

OR

- Where a decision in relation to the item might reasonably be regarded as affecting **your own** well-being or financial position, or that of your **family**, or your **close associates** more than most other people affected by the issue,

you have a personal interest.

WHAT MUST I DO? **Declare the existence, and nature, of your interest and stay**

- The declaration must relate to specific business being decided - a general scattergun approach is not needed
- **Exception** - where interest arises only because of your membership of another **public body**, there is no need to declare unless you **speak** on the matter.
- You **can vote** on the matter.

IS IT A "PREJUDICIAL INTEREST" ?

In general only if:-

- It is a personal interest **and**
- The item affects your **financial position** (or conveys other benefits), or the position of your **family, close associates** or bodies through which you have a **registered interest** (or relates to the exercise of **regulatory functions** in relation to these groups)

and

- A member of public, with knowledge of the relevant facts, would reasonably believe the interest was likely to **prejudice** your judgement of the public interest.

WHAT MUST I DO? **Declare and Withdraw**

BUT you may make representations to the meeting before withdrawing, **if** the public have similar rights (such as the right to speak at Planning Committee).



Standards

26th March 2012

7.00 pm

Committee

Committee Room 2 Town Hall

Agenda

Membership:

Independent Members:

Deborah Andrews (Chair)
Michael Collins (Vice-Chair)
Brian Warwick

Redditch Borough Councillors:

David Bush
Anita Clayton
Andrew Fry
Alan Mason
William Norton
Jinny Pearce
Mark Shurmer

Feckenham Parish Councillors:

Antonia Pulsford
Pam Eaton

1. Apologies	To receive the apologies of any Member who is unable to attend this meeting.
2. Declarations of Interest	To invite Councillors to declare any interests they may have in items on the agenda.
3. Minutes (Pages 1 - 4) Chief Executive	To confirm as a correct record the minutes of the meeting of the Standards Committee held on 20th April 2011. (Minutes attached)
4. Monitoring Officer's Report (Pages 5 - 8) Monitoring Officer	To receive a report from the Monitoring Officer on any matters of relevance to the Committee. (Report attached)
5. Localism Act 2011 - New Standards Regime (Pages 9 - 32) Monitoring Officer	To receive a report on upcoming changes to the standards regime in light of the Localism Act 2011 and to consider proposals for implementation of the new regime. (Report attached) (All Wards)

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<p>6. Chair's / Members' Reports Borough Director</p>	<p>To consider any Chair / Member updates not separately covered on the agenda list, including brief feedback from any Seminars or Conferences. (Oral report)</p>
<p>7. Parish Council Report (if any)</p>	<p>To consider any report in relation to Feckenham Parish Council. (Oral report)</p>
<p>8. Publications Head of Legal, Equalities and Democratic Services</p>	<p>To note any publications which the Committee may find of interest.</p>



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20th April 2011

MINUTES

Present:

Independent Members:

D Andrews (Chair)

M Collins (Vice-Chair)

B Warwick, Malcolm Hall, Derek Taylor and Antonia Pulsford

Feckenham Parish Councillor:

Antonia Pulsford

Officers:

C Flanagan and D Parker-Jones

Committee Officers:

I Westmore

19. APOLOGIES

Apologies for absence were received on behalf of Borough Councillors Anita Clayton and Andy Fry and Parish Councillor Louisa Venables.

20. DECLARATIONS OF INTEREST

There were no declarations of interest.

21. MINUTES

RESOLVED that

the minutes of the meeting of the Committee held on 13th October 2010 be confirmed as a correct record and signed by the Chair.

22. CHANGES TO THE ETHICAL FRAMEWORK FOR MEMBERS - LOCALISM AGENDA

Members received a report which had initially been drafted for the consideration of the County Council and which had subsequently

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Chair

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formed the basis of a discussion between County and District Council Monitoring Officers from across Worcestershire.

The report set out a number of matters which might require consideration in the light of the proposed changes to the Standards regime nationally. A key point that was brought to the attention of members of the Committee was the requirement to maintain high ethical standards without the statutory requirement for a Code of Conduct or a specific framework for maintaining such standards. Officers reported that the view County-wide amongst Monitoring Officers was to maintain a degree of consistency within Worcestershire, particularly given the numbers of individuals who were Members of more than one authority.

Other significant changes brought about by the proposals included a change to the status of any Independent Members who were thereafter appointed to local successor bodies to the statutory Standards Committees. In the future such Members would only be able to fulfil the role of non-voting co-opted members on any new decision-making body. The arrangements for Parish Councils would also change in that it was proposed that the District Monitoring Officer would no longer have responsibility for ethical conduct within Town or Parish Councils within their District boundaries.

The removal of the sanctions open to Standards Committees at the present time was highlighted as was the inability of Councils to re-introduce equivalent sanctions under any new general powers of competence introduced under the Localism Bill.

Members were somewhat concerned at the proposals contained within the Bill. There was general agreement that the existing regime was well-intentioned but unnecessarily rigid, prescriptive and burdensome in respect of timescales and resources. However, it was considered that the reasonable aspects of the regime were also being lost alongside those more onerous aspects. The Committee had a number of particular matters which they believed should be taken into account in the light of the removal of the existing regime, as follows:

- The adoption of a voluntary Code of Conduct to replace the existing Code was regarded a critical means of ensuring that standards of ethical conduct were maintained;
- The adoption of a county-wide voluntary Code and standards framework was considered to represent an efficient and practical means of ensuring that elected Members were supported in maintaining good ethical standards;
- The creation of a simplified process featuring an increased role for the Monitoring Officer in the filtering of complaints and a

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move away from an elongated Sub-Committee process was seen as important in restoring confidence in the standards regime as a practical means of maintaining ethical standards;

- The importance of a public hearing as a final stage in the process was seen as important given that one of an elected Member's most important assets was their credibility;
- The model which was regarded as most suitable for supporting the maintenance of good ethical standards was that of a non-decision-making advisory committee including Independent members and reporting to full Council.

RESOLVED that

- 1) the proposed changes to the ethical framework for Members be noted; and**
- 2) Officers note the comments of the Committee, as set out in the preamble above, on an appropriate way forward for the Council, should the provisions of the Localism Bill be enacted.**

23. MONITORING OFFICER'S REPORT

The Deputy Monitoring Officer updated the Committee on the cases that were currently going through the Standards system. It was noted that two cases had been resolved since the previous meeting of the Committee and that one case was still outstanding.

The Committee was also made aware of the views of Councillor Anita Clayton on the present Standards regime as it was conducted by Redditch Borough Council as she was unable to be present in person. It was conceded by Officers that there had been some apparent delay in disposing of cases but this was to be seen in the context of the nationally accepted timescales for taking a case through from beginning to end. The highly prescriptive guidance and processes established by Standards for England provided little scope for conducting investigations and hearings particularly expeditiously and local capacity-related problems had compounded the inherent difficulties.

It was suggested that, should the Council continue to operate a Standards regime once the current arrangements had ended, there would be scope to firstly filter any complaints that arose through the Deputy Monitoring Officers and, more generally, to simplify the process, thus avoiding some of the time-related problems that were the cause of some concern.

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RESOLVED that

the report of the Monitoring Officer be noted.

24. CHAIR'S / MEMBERS' REPORTS

There were no reports from the Chair or Members of the Committee.

25. PARISH COUNCIL REPORT (IF ANY)

There was no report from the Parish Council representatives, other than to note the lack of a need for a Parish Council election in May given the want of nominees to fill the seats available.

26. PUBLICATIONS

There were no publications to consider.

27. WORK PROGRAMME

Given the ongoing changes to the Standards regime, it was suggested that the Committee Work Programme be kept open-ended for the present.

RESOLVED that

the Committee Work Programme be noted.

The Meeting commenced at 7.00pm
and closed at 8.11pm

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Chair

REDDITCH BOROUGH COUNCIL**STANDARDS
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MONITORING OFFICER'S REPORT

Relevant Portfolio Holder	Councillor Michael Braley, Portfolio Holder for Corporate Management
Portfolio Holder consulted	
Relevant Head of Service	Claire Felton, Monitoring Officer
Wards affected	All Wards
Ward Councillor consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

This is the third report of the Monitoring Officer. It is proposed that a report of this nature will be presented to each meeting of the Standards Committee to advise the Committee on a number of items.

2. RECOMMENDATIONS

The Committee is asked to RESOLVE that

the report of the Monitoring Officer be noted and commented upon as appropriate.

3. KEY ISSUES**Financial Implications**

3.1 There are no financial implications arising out of this report.

Legal Implications

3.2 The Local Government Act 2000 introduced primary legislation to enable the implementation of a Members' Code of Conduct, and this was amended by the Local Government and Public Involvement in Health Act 2007 insofar as it related to the application of the Members' Code of Conduct to their private lives. Further details have been provided by the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints. This regime is in the process of being replaced following the passing into law of the Localism Act 2011.

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Service / Operational Implications

Member Investigations

- 3.3 Members are advised that the Investigating Officer's report for complaint reference 02/2010 was considered at a hearing of the Standards Determination Sub-Committee on 28th November 2011. The Standards Determination Sub-Committee found as follows:-

The Sub-Committee has decided that there has been no breach of the Redditch Borough Council Code of Conduct.

The Standards Committee's reasons for this decision were:

The Sub-Committee accepted former Councillor Vickery's argument that the comments were made within a political context and that no personal offence was intended to the Leader of Redditch Borough Council. However, the Sub-Committee did consider that the comments were intended to be sensationalist and that the point could have been made in a more appropriate way.

- 3.4 No recommendations were made to the authority.
- 3.5 Finally, Members are advised that the Assessment Sub-Committee considered complaint reference 01/2011 at a meeting on 27th April 2011. The Sub-Committee determined that there had not been a breach of the Code of Conduct in this case and that no action should be taken on the allegations. No request for a review of this decision was received from the complainant.
- 3.6 The Committee is asked to note that the details of only those complaints which have already been assessed by the relevant Assessment Sub-Committee are included in this report. Any complaints or other matters which are currently awaiting assessment, or for which Assessment Sub-Committee decisions are in the process of being issued, are not included as the Subject Members concerned will not be aware that a complaint has been made against them until after the assessment stage.

Member Training

- 3.7 The 2012/13 programme of Member training is currently being established. It is intended that this will include training on the Code of Conduct under the

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new standards regime which it is anticipated will come into force on 1st July 2012. Whilst non-mandatory, it will be highly desirable for all Members to attend the Code of Conduct training. Three separate sessions will be run for this: one for Redditch Borough Councillors; a second for Bromsgrove District Councillors; and a third for Parish Councillors and Parish Clerks/Executive Officers. However, none of the sessions will be exclusive, meaning Members can attend any session they wish. Any Independent Persons appointed under the new regime should also attend one of the sessions.

- 3.8 The Bromsgrove District Councillor session will take place at 6.30pm on Wednesday 13th June. The session will be conducted by Simon Mallinson, Head of Legal and Democratic Services and Monitoring Officer at Worcestershire County Council. Dates for the remaining two sessions, which will be conducted by a separate external provider, will be established shortly.
- 3.9 Separate mandatory training for all members of the Standards Committee will take place immediately prior to the first meeting of the new successor Standards Committee on Monday 16th July. Further Standards Committee mandatory training sessions will then be arranged as necessary.

Localism Act 2011

- 3.10 The Localism Act became law on 15th November 2011. A separate report on the implications of the Act for the standards regime and standards committees appears at item 7 of this agenda.

Standards for England

- 3.11 As outlined in the standards provisions of the Localism Act, the regulatory role of Standards for England (SfE) ceased to exist on 31st January 2012. From that date, SfE no longer had powers to accept new referrals from local standards committees or conduct investigations into complaints against Members. Its role in providing guidance on the existing standards framework has also ceased and any guidance previously issued by SfE now takes on a different status to reflect the cessation of its regulatory role. It is anticipated that the organisation will formally close on 31st March 2012.

Customer / Equalities and Diversity Implications

- 3.12 No such implications have been identified.

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4. RISK MANAGEMENT

The main risks associated with the details included in this report are:

- Risk of challenge to Council decisions; and
- Risk of complaints about elected Members.

5. APPENDICES

None

6. BACKGROUND PAPERS

Member complaint files (much of which is confidential)

AUTHOR OF REPORT

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LOCALISM ACT 2011 - NEW STANDARDS REGIME

Relevant Portfolio Holder	Councillor Michael Braley, Portfolio Holder for Corporate Management
Portfolio Holder Consulted	Yes - in summary - but further consultation on detail required.
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Ward(s) Affected	All Wards
Ward Councillor(s) Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Localism Act 2011 introduces fundamental changes to the system of regulation of the standards of conduct for elected and co-opted Councillors (with voting rights).
- 1.2 This report describes the changes and sets out proposals for consideration by the Standards Committee in order that they may make recommendations to Full Council on how the new regime may be implemented.

2. RECOMMENDATIONS

- 2.1 Members of the Committee are being asked to consider whether to recommend to the Full Council that an appropriate way of discharging its duty to promote high standards of behaviour in public life would be to set up a Standards Committee and if so what the composition of that committee would be.
- 2.2 Members of the Committee are being asked to consider and approve in principle the content of the Draft Code of Conduct at Appendix 1 to this report and to make recommendations to Full Council in this regard.
- 2.3 Members are asked to consider the draft process for managing standards complaints at Appendix 2 to this report and to make recommendations to Full Council in this regard.
- 2.4 Members are asked to consider the proposed role of Parish Representatives on the Standards Committee and to make recommendations to the Full Council in this regard.
- 2.5 Members are asked to consider the proposals for discharging the requirement under the Localism Act for an Independent Person(s) and to make recommendations to Full Council in this regard.

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- 2.6 Members are asked to consider the proposals for managing dispensations and to recommend a process for managing the same to Full Council.

3. KEY ISSUES**Financial Implications**

- 3.1 It is anticipated that the Council will wish to include the roles associated with the new regime within the scheme of Members' allowances and that a payment will be made to the Independent Person(s) appointed in accordance with section 28 (7) of the Localism Act 2011.
- 3.2 The costs associated with this will need to be determined by Full Council but it is not anticipated that this will be in excess of the budgets currently allocated for this purpose.

Legal Implications

- 3.3 The Localism Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will therefore no longer be a requirement for a Standards Committee, however there will still be a requirement to deal with standards issues and case work. It will be necessary therefore for the Standards Committee in its current structure to be disbanded and the proposal is that it be replaced by an ordinary Committee of the Council established to deal with Standards issues.
- 3.4 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a Member or co-opted Member of the authority (or Parish Council within the authority's area) has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- 3.5 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a Member (or a Member, or co-opted Member of a Parish Council) against whom an allegation has been made.

Service / Operational Implications

- 3.6 The Localism Act fundamentally changes the way in which standards of conduct for elected and co-opted Councillors are regulated.

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- 3.7 Whilst the Council will retain a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members the new provisions will enable Local Authorities to introduce a more flexible approach as to how this may be best achieved.
- 3.8 Members will be aware that under the current regime the Council has a statutory obligation to appoint a Standards Committee and the process by which that Committee operates is strictly prescribed by the relevant regulations and guidance.
- 3.9 Whilst there is no requirement under the Localism Act for a statutory Standards Committee in its current form there is a duty for the Council to maintain and promote high standards in public life and Council must have a process for managing complaints in this regard.
- 3.10 It would therefore be logical for the Council to consider the creation of a normal Committee of the Council to enable the Council to properly discharge its duty to maintain and promote high standards in public life.

Standards Committee

- 3.11 As referred to in paragraph 3.3 the newly created Standards Committee will operate as a normal committee of the Council. It is anticipated that the implementation date for the new style committee will be 1st July 2012 but this has not yet been formally confirmed as the relevant regulations and guidance have yet to be issued by the government.
- 3.12 Members should note that the new style committee will not be able to operate with the unique features that were afforded to it in under the previous regime. In other words the composition of the committee will be governed by the normal rules relating to political proportionality and the current restriction that allows only one member of the Executive Committee to sit on the Standards Committee will cease to apply.
- 3.13 The current Independent Members of the Standards Committee will cease to hold office and the Act introduces a new category of Independent Person whose role is detailed under a separate heading later in this report.
- 3.14 The Council will continue to have responsibility for dealing with standards complaints against elected and co-opted Councillors at District level and will continue to have responsibility for dealing with standards complaints against Members of Parish Councils, but the current Parish Council Representatives will cease to hold office.

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- 3.15 It is important therefore for members of the Committee to consider how best to enable Parish involvement in the process moving forward so as to ensure that the Council's duty to promote high standards of behaviour within Parish Councils is achieved.
- 3.16 For the purposes of this report members of the Committee are being asked in the first instance to consider whether to recommend to the Full Council that an appropriate way of discharging its duty to promote high standards of behaviour in public life would be to set up a Standards Committee and if so what the composition of that committee would be.

The Code of Conduct

- 3.17 The Council will be required to adopt a Code of Conduct.
- 3.18 Recognising that it is important to ensure that all Councillors whether County, District or Parish are clear in relation to their obligations under a Code of Conduct the Monitoring Officers across the County have worked together to produce a draft Code of Conduct and it is proposed that this be adopted by all Councils whether County, District or Parish in an attempt to support Councillors in this regard. A copy of the draft Code of Conduct for Worcestershire is attached at Appendix 1. Members are asked to note that the Code is still in draft format and discussions to agree a final version are on-going. Whilst the first part of the draft Code dealing with the conduct expected of Members can be regarded as more or less finalised, the second section on interests will be subject to further changes because the related regulations and guidance are not yet available (as referred to at 3.10 above).
- 3.19 Members of the Committee are advised that the Monitoring Officer has also spoken to a representative from the Worcestershire County Association of Local Councils (CALC) regarding the proposal of adoption of a Code of Conduct for all authorities in Worcestershire. Early discussions have revealed that it would be the intention of CALC to recommend to Parishes that they also adopt the same Code of Conduct for the same reasons as outlined above.
- 3.20 It is fair to say that the majority of problems associated with the current standards regime have resulted as a consequence of the process for administering and determining complaints rather than as a consequence of the Code itself.
- 3.21 For this reason, and the fact that Members are now very familiar with the Code, Officers have used the existing Code as the starting point when drafting the new one and it is proposed that the ten principles of public life will continue to form the basis for the levels of behaviour expected.

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- 3.22 In addition the new Code will need to set out the requirements in relation to the registration and declaration of Interests – these will now be described as “Disclosable Pecuniary Interests”, “Other Pecuniary Interests” and “Non Pecuniary Interests”.
- 3.23 As referred to above, it is not yet possible for Officers to include within the draft Code the definitions of these classifications of interest as the Regulations that will provide these have not yet been published by the government. Officers will continue to update members as these issues become clearer.
- 3.24 In the meantime Officers have worked to establish the most straight forward mechanism whereby Members can register and declare interests under the new regime and these appear within Part 2 of the draft Code that appears at Appendix 1 for Members' consideration.

Register of Members' interests and disclosure of interests

- 3.25 In accordance with the Localism Act the Monitoring Officer is required to establish and maintain a register of interests of Members and co-opted Members of the District/Borough Council and the Parish Councils.
- 3.26 The Localism Act provides that the register must contain “Disclosable Pecuniary Interests”. At this stage the draft Code reflects this requirement but does not extend that duty to either “Non Pecuniary Interests” or “Other Pecuniary Interests”. Again without definition of the categories at present it is difficult to assess what the appropriate levels of registration should be.
- 3.27 Members are advised that, for the purposes of interests falling into the category of “Disclosable Pecuniary Interests”, the requirement to register these will extend not only to the Members themselves but also to:
- Their spouse or civil partner;
 - A person with whom they are living as husband and wife; or
 - A person with whom they are living as if they were civil partners,
- provided that the Member concerned is aware that the other person listed above has the interest.
- 3.28 Every elected or co-opted person must notify the Monitoring Officer within 28 days of being elected or co-opted onto the authority of all current disclosable pecuniary interests and for the purposes of this report the Monitoring Officer is proposing that Members continue to update this as an ongoing requirement throughout their term of office.

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- 3.29 Failure to register any such interest or the provision of misleading information on registration without reasonable excuse will be a criminal offence, potentially carrying a Scale 5 fine (£5,000) and/or disqualification from being a Councillor for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions. Members are advised that the Monitoring Officer is in discussions with the Police in order to establish how this will actually happen in practice and in order that Members can be properly supported to ensure that wherever possible this can be avoided.
- 3.30 Members are advised that the Localism Act is far from straight forward in its approach to interests and the disclosure thereof and for this reason the Monitoring Officer has been working closely with County colleagues to establish a process for registering and disclosing interests that is open and transparent, clear to follow and meets the requirements of the Act.
- 3.31 Members are advised that for the purposes of this report Officers will not be able to provide the detail that would be associated with the categorisation and disclosure of interests as this is not possible to determine until the regulations on these issues have been published.

Sensitive Information

- 3.32 Members will recall the ability under the current regime for Members to register and declare the existence of sensitive interests without the need for public disclosure in very limited and specific circumstances. The Localism Act continues to recognise the need for this and Members will note section 14 within the draft new Code at Appendix 1 that deals with this point.

Dispensations

- 3.33 The existing provisions on dispensations are significantly changed by the Localism Act.
- 3.34 The new arrangements allow for a dispensation to be granted on the following grounds –
1. That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would impede the transaction of business. In practice this would mean that the decision-making body would be inquorate as a result;
 2. That without the dispensation the representation of different political groups on the body transacting business would be so upset as to alter the outcome of any vote on the matter;
 3. That the Council considers that the dispensation is in the interests of persons living in the authority's area;

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4. That without a dispensation no member of the Executive Committee would be able to participate on the matter; or
 5. That the authority considers that it is otherwise appropriate to grant a dispensation.
- 3.35 Any grant of a dispensation must specify how long it lasts for, up to a maximum of four years.
- 3.36 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 by Council to the Standards Committee or to the Monitoring Officer.
- 3.37 For the purposes of this report it is proposed that in relation to points one and two above that the delegation be made to the Monitoring Officer in consultation with the Independent Person, with an appeal to the Standards Committee thus enabling dispensations to be granted in a timely and efficient manner where appropriate. Three and five would remain with the Standards Committee in consultation with the Independent Member. In relation to point four, with reference to Executive Committee decisions provision can be made in the Scheme of Delegations to allow the Leader to take the decision by using his powers as a "Strong Leader". Were the Leader himself to be unable to act, the matter would have to be referred to the Standards Committee for a dispensation as per points 3 and 5.

Independent Person(s)

- 3.38 The Act requires the Council to appoint at least one Independent Person.
- 3.39 Members are advised that under the new arrangements the office of current Independent Members of the Standards Committee will cease and that a new category of Independent Person is established.
- 3.40 Members should be aware that the Independent Person role is quite different from that carried out by Independent Members of the current Standards Committee and that the new role will become a consultative one for the Monitoring Officer, the Committee and the person against whom an allegation has been made.
- 3.41 Independent Persons will need to be appointed by advertisement and application, and there are strict rules governing the category of person who would be eligible to fill this role.
- 3.42 Members are advised that on the face of it current Independent Members would not be eligible to apply although members are advised that the Monitoring Officer has been working with County colleagues to determine whether it would be beneficial to establish a pool of Independent Persons to support all Districts and the County in this regard.

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If members were minded to recommend that this be an appropriate way to proceed then it may enable the expertise of current Independent Members to be retained throughout the County albeit restricted in relation to the Council for which they can act. The Monitoring Officer will advise the Committee in relation to this in more detail at the meeting.

- 3.43 It is clear that the arrangements are moving to enable Councils to establish a mechanism for local resolution where it is possible to do so and members are advised that the Monitoring Officer is keen to establish as many opportunities for the use of the new Independent Person throughout the process to enable this to be achieved.

New arrangements for dealing with Standards Allegations

- 3.44 In addition to the adoption of a Code of Conduct, the Council will also have a duty to have in place arrangements to deal with complaints into Member conduct both at District and Parish level.
- 3.45 The Monitoring Officer, Deputy Monitoring Officer and Ethical Standards Officer have worked together to establish a draft process for managing standards complaints and recognise that members of the Standards Committee will wish to make recommendations to Full Council in this regard. An outline draft process is attached at Appendix 2 to this report for members' consideration, with the intention that a more detailed mapping of the process be discussed at the meeting. Members are asked to note that the current arrangements for Assessment Sub-Committees will no longer apply under the new regime. Where final hearings do prove necessary, Members may want to consider and recommend to Full Council the continued use of panels for deciding complaints, as at present.
- 3.46 Members will note from the draft process that Officers have attempted where possible to ensure that local resolution options are used and that the Leaders of Political Groups and the Chairmen of Parish Councils are included in conjunction with the new Independent Person to encourage mediation and support measures to be used when the circumstances allow, and that investigations are reserved for those cases where there would appear to be no other practical and effective alternatives.

Sanctions

- 3.47 The Act does not give the Council or its Standards Committee any powers to impose sanctions so it would appear that where a complaint is upheld under the new arrangements that the Council will have a number of options available to it to secure the continuing ability of the Council to discharge its duty to uphold and promote high standards of behaviour in public life effectively.

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- 3.48 In practice this is going to involve more practical steps at a local level to help and support Councillors in a great proportion of the complaints that arise and members may wish to consider the following for local adoption;
- Reporting findings to Full Council (or to the Parish) for information;
 - Agreement by the Member to apologise or a recommendation to the Member's Group Leader that he facilitates an apology from the Member;
 - Recommending to the Member's Group Leader (or in the case of ungrouped Members to the Council or to Committees) that the Member be removed from any or all of the Council's Committees or Sub-Committees;
 - Recommending to the Leader of the Council that the Member be removed from the Executive Committee, or removed from particular Portfolio responsibilities;
 - Instructing the Monitoring Officer to (or recommending that the Parish) arrange training for the Member;
 - Withdrawing (or recommending to the Parish that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email facilities and internet access;
 - Excluding (or recommending that the Parish exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 3.49 There is a particular difficulty in respect of Parish Councils as the Localism Act gives the Council or its Standards Committee no power to do any more in respect of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of a Member.
- 3.50 Parish Councils will be under no obligation to accept any such recommendation notwithstanding the Council's duty to uphold the standards of behaviour within the Parish Councils and their duty to investigate any complaints against Parish Councillors or co-opted Councillors.
- 3.51 Members of the Committee are advised that the Monitoring Officer has discussed this issue in detail with the representative from CALC on behalf of the other Districts and the County.
- 3.52 It is proposed as a consequence of those discussions that members consider that an effective way of managing this situation would be to continue to involve Parish Council Representatives on the Standards Committee (albeit in a non-voting capacity) and to ensure that those Representatives are involved in any hearings that involve Parish Councillors.

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- 3.53 In addition to this it is proposed that the early resolution stages include Parish involvement in Parish matters and where there are positions of conflict involved, if agreed, a CALC Representative.
- 3.54 In any event it is proposed that were members of the Committee minded to agree this recommendation that the arrangements be reviewed after 12 months to monitor effectiveness.
- 3.55 There will be criminal sanctions if a Councillor:
- fails to register Disclosable Pecuniary Interests within 28 days of taking office;
 - fails to declare a Disclosable Pecuniary Interest at meetings;
 - fails to register Disclosable Pecuniary Interests within 28 days of disclosure;
 - participates in any discussion or votes on a matter in which the Member has a Disclosable Pecuniary Interest; or
 - makes an Executive decision in which the Member has a Disclosable Pecuniary Interest.
- 3.56 As already outlined within this report these matters will be handled by the Police and Crown Prosecution Service with offences punishable by a fine not exceeding £5000. The Court may also disqualify a Councillor for a period not exceeding five years.
- 3.57 Members are advised that the new arrangements will include a process for dealing with such complaints recognising that it will be necessary in some instances for an internal resolution to be sought in conjunction with the criminal process.

Appeals

- 3.58 There is no right of appeal against a decision within the new arrangements although the decision would be open to judicial review by the High Court if it was patently unreasonable, or if it was taken improperly, or if it sought to impose a sanction which the Council had no power to impose.

Implementation Date and Transitional Arrangements

- 3.59 The regulations to cover implementation and transitional arrangements have not yet been published. However, it is anticipated that the transitional phase will commence on 1st April 2012 (referred to as the "Appointed Day"). With effect from that date Standards Committee will no longer be able to impose suspensions and the ability to make appeals to the First -tier Tribunal will cease. Sanctions will be limited to censure, training, withdrawal of facilities etc.

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Authorities will have a two month period starting from 1st April to process and finalise any outstanding complaints.

It is not clear whether it will be possible for any new complaints to be made under the old system after 1st April. The new style Standards Committee and new obligations under the Localism Act will come into effect from 1st July 2012.

Customer / Equalities and Diversity Implications

- 3.60 The Council is aware that any process for managing standards of behaviour for elected and co-opted Councillors must be accessible to the public. It is therefore proposed that an impact assessment will be carried out on the complaints process when established to ensure accessibility. In addition it is proposed that the members of the Council's Equality and Diversity Forum receive a presentation in relation to the new arrangements for comment.
- 3.61 Members are advised that the new arrangements will be publicised on the Council's website and that Officers will work to ensure that members of the public are made aware of the process for making a complaint through all existing community engagement events.

4. RISK MANAGEMENT

Members are advised that they are obliged to consider and determine appropriate mechanisms for managing complaints and to discharge their duty to promote high standards in public life, at District and Parish level, and that whilst the process for doing this is no longer governed by statute that a process will nevertheless need to be adopted and that the proposals within this report would enable the Council to discharge this.

5. APPENDICES

Appendix 1 - Draft Code of Conduct

Appendix 2 - Draft process for managing standards complaints

6. BACKGROUND PAPERS

Relevant sections of the Localism Act 2011.

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XXXXXXXXX COUNCIL

CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1. (1) This Code applies to **you** as a member or co-opted member of XXXXXXXXX Council.

(2) You should read this Code together with the Ten [Seven] Principles of Public Life [also known as the Nolan Principles] which are set out in [Appendix 1] [below]

Comment [s1]: To be agreed locally – some councils may opt for Seven principles

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of

(a) the authority;

(b) any of the authority's, sub-committees, joint committees, joint sub-committees, or area committees;

(c) the executive (Cabinet) of the authority or it's committees

"Monitoring Officer" means the Monitoring Officer for the principal Council which is XXXXX Council;

Scope

2. (1) This Code applies to you as a member of this authority when you act in your role as a Member.
- (2) Where you act as a representative of the authority:
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. (1) You must treat others with respect.
- (2) You must not:
 - (a) do anything which may cause your authority to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with the authority's Code of Conduct;
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

4. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) 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
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of, or under the control of, the authority:
 - (i) act in accordance with the authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity.

7. You must:
- (a) when reaching decisions on any matter have regard to any relevant advice provided to you by the authority's officers and in particular by the authority's Monitoring Officer and Section 151 Officer; and
 - (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority
8. You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

Part 2

Interests

Disclosable Pecuniary Interests ("DPI")

9. (1) You will have a Disclosable Pecuniary Interest ("DPI") under this Code if:-
- (a) such interest meets the definition prescribed by XXX regulations as amended from time to time and set out in Appendix 2 to this Code; and
 - (b) it is either an interest of yourself; or it is an interest of :-
 - (i) your spouse or civil partner; or
 - (ii) a person with whom you are living as husband and wife: or
 - (iii) a person with whom you are living as if you were civil partners;

And you are aware that the other person has the interest.

Other Pecuniary Interests

Note – Agreed by County solicitors that this will cover interests of a financial nature but outside the definition of dpi's as laid down by the regulations. Full definition to be confirmed once the regulations are available

10.(1) You will have an Other Pecuniary Interest.....

Non-pecuniary interests

- 11.(1) You will have a Non-pecuniary Interest in any matter if you or a member of your family or person or organisation with whom you are associated have a close connection with the matter under discussion.
- (2) If you are a member of another local authority, or public body, or you have been appointed as the Council's representative on an outside body, you do not have a non-pecuniary interest unless a member of the public knowing the circumstances would reasonably regard membership of the body concerned as being likely to prejudice your judgment of what is in the public interest.

Registration of Disclosable Pecuniary Interests

12. (1) You must within 28 days of becoming a member of the authority or being re-elected notify the Monitoring Officer in writing of any DPI which you hold at the time notification is given
- (2) You must within 28 days of becoming aware of any new DPI, or changes to existing DPIs notify the Monitoring Officer in writing.

Disclosure of Interests

- 13.(1) DPIs
- (a) If you are present at a meeting of the Council committee and you have a DPI then you must:-
- i Disclose the nature and existence of the interest; and
 - ii Leave the meeting (including the meeting room and public gallery) and take no part in the discussion; and
 - iii If the interest has not already been recorded notify the Monitoring Officer of the interest within 28 days beginning with the date of the meeting.
- (b) If you have a DPI you must not participate in informal meetings/briefings and site visits and must disclose the DPI in any correspondence with the Council.

(2) Single Member Decisions

If when participating in single member decision making you have a DPI affecting the matter being decided then you may take no steps other than asking for the matter to be decided under alternative arrangements.

Comment [s2]: Not applicable to Parish Councils

(3) Dispensations

The only exception to paragraph 13(1) is that you may take part in the discussion and vote regarding a matter in which you have a disclosable pecuniary interest provided that you have been granted a dispensation by your authority in accordance with section 33 of the Localism Act 2011. The procedure for applying for a dispensation is set out at Part XXXXX of the [Council's Constitution] [Standing Orders]

Comment [s3]: In the case of a Parish Council

(4) Other Pecuniary Interests and Non-pecuniary Interests

(a) If you are present at a meeting of the Council and you have an Other Pecuniary Interest or a Non-pecuniary interest then you must:

- i Disclose the nature and existence of the interest; and
- ii If the interest is one which a member of the public knowing the circumstances would reasonably regard as being likely to prejudice your judgment of what is in the public interest leave the meeting (including the meeting room and public gallery) and take no part in the discussion.

Sensitive Information

14. (1) An interest will be a sensitive interest if the two following conditions apply:

- (a) That you have an interest (whether or not a DPI); and
- (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

(2) Where following consultation with the Monitoring Officer it is decided that an interest is a "sensitive interest" copies of the register that are made available

for inspection and any published version of the register must not include details of the interest. The Monitoring Officer may decide to state on the register that the member has an interest the details of which are excluded under this section.

- (3) Where the sensitive interest is a DPI the usual rules relating to disclosure of that interest will apply save that the member will not be required to disclose the nature of the interest but merely the fact that they hold a DPI in the matter concerned.

APPENDIX 1

The Ten Principles of Public Life (*not attached*)

APPENDIX 2

The Localism Act Definition of Disclosable Pecuniary Interests Regulations (*not attached*)

**Draft process for managing standards complaints under the
Localism Act 2011**

The following provides an outline of the anticipated process for how standards complaints under the Localism Act 2011 will be dealt with.

A more detailed mapping flow of the process will be made available to the Standards Committee at the meeting.

Key:

C	Complainant
IO	Investigating Officer
IP	Independent Person
MO	Monitoring Officer
PC	Parish Council
SM	Subject Member

Note: The MO reserves the right, at any stage in the process, to seek to consult with 'relevant parties' on any aspect of a complaint, or on any proposed course of action in relation to a complaint. For this purpose relevant parties may include, amongst others:

- the Leaders of the Political Groups;
- a Representative from the Worcestershire Association of Local Councils;
- the Chairman, Vice-Chairman or Clerk/Executive Officer of a Parish Council; or
- a Representative of the Police or other relevant regulatory body.

Stages in the process

1. Written complaint received by the MO.
2. The MO will send a written acknowledgement of the complaint to the C and the SM, which will explain the process involved and confirm any relevant timeframes.
3. The MO will review the complaint, in consultation with the IP, to determine whether it can be dealt with (in first instance at least) via local resolution, or whether a formal investigation is required.

(Note: If any criminal conduct or breach of other regulation is identified the MO may refer the matter to the Police or other regulatory agency. The MO will, at the same time, continue to undertake any separate course of action on behalf of the Council in relation to the complaint, as deemed appropriate and where necessary in consultation with the IP, with a view to maintaining high standards of Member conduct.)

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4. Once having reviewed the complaint the MO will notify the C, SM, and if the complaint relates to a Parish Councillor the PC concerned, in writing of how she intends to proceed with the complaint and her reasons for the decision.

Local resolution

5. If the MO attempts to deal with the complaint under local resolution she will liaise with the relevant parties to seek to agree a way forward.
6. If the SM accepts that his/her conduct was unacceptable and offers an apology, and/or if other remedial action is offered/undertaken by either the SM or the authority, the MO will notify the C of any reasonable terms offered by either the SM and/or the authority.
7. If the C accepts the terms offered the MO will write to all parties detailing the outcome and the matter will be closed.
8. If the C does not accept the terms offered the MO will determine, in consultation with the IP, whether the complaint merits a formal investigation.
9. The MO will write to the relevant parties detailing her decision and the reasons for the decision and the matter will either be closed or a formal investigation will take place.

Formal investigation

10. If (at stages 3 or 8) the MO determines that a formal investigation is necessary the MO will appoint an IO.
11. The IO will conduct the investigation and in doing so will liaise with any relevant parties, as appropriate.
12. The IO will produce a draft report detailing his/her findings and will send a copy of the report to the C and SM for comment.
13. Following comments from the C and/or SM the IO will finalise his/her report and will send a copy of the final report to the MO.
14. The MO will review the IO's report and, depending on the IO's findings and the reasons for those findings, will determine the next course of action.

Available options following formal investigation

15. If the IO finds that there is no evidence of any failure by the SM to comply with the Code of Conduct and the MO is satisfied with the IO's findings the MO will, following consultation with the IP, write to the C, SM, and if the

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complaint relates to a Parish Councillor the PC concerned, enclosing a copy of the final report and confirming that she is satisfied that no further action is required. The matter will then be closed.

16. If the IO finds that there is evidence of failure by the SM to comply with the Code of Conduct and the MO is satisfied with the IO's findings the MO will determine, in consultation with the IP and depending on the seriousness of the failure in question, whether to send the matter for a local hearing or to seek to resolve the matter via local resolution.
17. If the MO attempts to conclude the matter via local resolution she will liaise with the relevant parties to seek to agree a fair resolution, with a view to ensuring higher standards of conduct by the SM in the future.
18. If a fair resolution is agreed and the SM complies with the suggested resolution the MO will report the matter to the Standards Committee, and if the matter relates to a Parish Councillor to the PC concerned, for information. No further action will be taken and the matter will then be closed.
19. If (at stage 17) the C tells the MO that any suggested resolution is not adequate, or if the SM is not prepared to undertake any proposed remedial action, the MO will refer the matter for a local hearing.

Local hearing

20. Where (at stages 3, 8, 16 or 19) a local hearing is to take place, a pre-hearing process will be undertaken which will seek to facilitate the smooth running of the hearing including, for example, the identification of any significant disputed facts and the calling of any witnesses.
21. The hearing will take place in accordance with the published procedure and a formal written decision of the Hearing Panel will follow as soon as reasonably practicable after the hearing.

Additional notes

- (i) Full Council can, by resolution, amend these arrangements and can delegate to the Chairman of the Hearings Panel the right to depart from these arrangements where the Chairman considers it expedient to do so in order to secure effective and fair consideration of a matter.
- (ii) There is no right of appeal for either the C or SM against a decision of either the Monitoring Officer or of the Hearings Panel. Any decision would, however, 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 Council had no power to impose.

