

STANDARDS COMMITTEE

20th April 2011

CHANGES TO THE ETHICAL FRAMEWORK FOR MEMBERS - LOCALISM AGENDA

Relevant Portfolio Holder	Councillor Michael Braley, Portfolio Holder for Corporate Management
Relevant Head of Service	Claire Felton, Monitoring Officer
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Localism Bill proposes the abolition of the existing Standards regime.
- 1.2 Members views are sought on how the Council should respond to the proposed changes, should they subsequently be enacted.

2. RECOMMENDATIONS

The Committee is asked to RESOLVE that:

- 1) **the proposed changes to the ethical framework for members be noted ; and**
- 2) **Officers note the comments (if any) of the Committee on an appropriate way forward for the Council, should the provisions of the Localism Bill be enacted.**

3. BACKGROUND

- 3.1 The Government announced its intention in May 2010 to 'abolish the Standards Board regime'. No further details were available at the time as to whether that meant surgical removal of the centralised national apparatus, or abolition of the entire ethical framework.
- 3.2 In September 2010 the Department for Communities and Local Government (DCLG) announced that "the whole Standards Board regime consisting of a centrally prescribed code of conduct, standards committees with the power to suspend councillors and an unelected central body will be axed in the upcoming Localism Bill".
- 3.3 The DCLG's announcement also advised that in place of the current Standards Board regime the Government would introduce legislation "to ensure that if a councillor is corrupt and abuses their office for personal gain they will be dealt with in the criminal courts".

STANDARDS COMMITTEE

20th April 2011

3.4 In December 2010 the Localism Bill provided more information on proposals for the future of standards in local government. It is still a Bill and not law. Even if the legislation is passed as published later this year, implementation may not be until late 2011 or 2012. In the meantime, the current framework continues until the legislation is brought into effect.

4. KEY ISSUES

4.1 The Localism Bill proposes the **abolition** of:

- the **mandatory Code of Conduct** for members
- the **mandatory process** for dealing with complaints against Members
- **suspensions/disqualifications** for breaches of the Code
- the **requirement to have a Standards Committee and Standards for England**.

4.2 The Bill proposes that there will be a continuing requirement for members to **register and declare personal interests** and not use their position improperly for personal gain. Wilful breach of these requirements will become a **criminal offence**.

4.3 Local authorities will have **discretion**:

- **whether to have any local Code of Conduct** at all
- over the **content of any local Code** it adopts
- **how to deal with complaints** against members and
- whether to have a Standards Committee.

4.4 The Committee is asked whether it has any **early steer** as to the Council's approach should the Bill be enacted. It is not yet the law, and Bills do change or fall. However, some **relevant questions** are:

- Should we have a Code?
- If so, should we retain the existing Code? If not, what are the 'best bits' from the existing Code to be recycled? What should be left out?
- Should anything else be included in a Code?
- Should any steps be taken to homogenise the approach with other Districts and the County?
- Should we have a Standards Committee?
- If we have a Code, how should we deal with complaints against members?

STANDARDS COMMITTEE

20th April 2011

Abolition of the 'Standards Board regime'

- 4.5 The Localism Bill pursues the Government's promise to abolish the 'Standards Board Regime' in England introduced by the Local Government Act 2000. Various amendments to existing legislation will be required in order to abolish:
- A mandatory Model Code of Conduct for members of local authorities
 - Statutory Standards Committees of local authorities;
 - Standards for England, and
 - The jurisdiction of the First Tier Tribunal in relation to local government standards in England.
- 4.6 One minor amendment consequential to the removal of the statutory requirement to have a Standards Committee relates to the grant and supervision of exemptions from political restrictions to Council officers. Currently, the Council's Standards Committee considers any application for exemption from a political restriction. Under the Localism Bill, this role is passed to the Head of Paid Service (i.e. the Chief Executive).
- 4.7 If passed, the abolition of Standards for England and revocation of the mandatory Code of Conduct for members and statutory complaints procedures will take place on a date to be appointed by the Secretary of State. In the meantime, allegations of misconduct against a member of the Council are to be dealt with under the current framework until it is revoked.
- 4.8 The Localism Bill gives the Secretary of State the power to make transitional provisions in relation to the abolition of the 'Standards Board regime' and its replacement with localised discretion.

Duty to promote and maintain high standards of conduct

- 4.9 Although the mandatory tools to achieve this are to be removed, the Localism Bill would still impose a **statutory duty** on the Council to "promote and maintain high standards of conduct by members and co-opted members" of the Council.

Voluntary Code of Conduct

- 4.10 The Localism Bill allows Councils to adopt a "voluntary code of conduct" dealing with the conduct that the Council expects of members and co-opted members of the Council when they are **acting in their official capacity**.

STANDARDS COMMITTEE

20th April 2011

- 4.11 The Bill provides that the Council may decide:
- to **revise its existing mandatory Members' Code of Conduct** and adopt this revision as the Council's voluntary Members' Code of Conduct;
 - to **adopt a new** voluntary Members' Code of Conduct to replace its existing mandatory Members' Code of Conduct, or
 - to **withdraw** its existing mandatory Members' Code of Conduct without replacing it.
- 4.12 Given the expectations of proper behaviour and the proposed statutory duty to maintain high standards, members may well consider that having no Code at all to set the yardstick would be retrograde.

Complaints

- 4.13 If the Council adopts a Code, then members would have to comply with it – it is not 'voluntary' for individual members. If a written allegation is made to the Council that a member or co-opted member of the Council has failed to comply with it, the Council must:
- consider whether it is **appropriate to investigate** the allegation, and
 - if the Council decides that an investigation is appropriate, **investigate** the allegation in such manner as the Council thinks fit.
- 4.14 There would need to be some mechanism for deciding those questions. What mechanisms would be a matter for the Council, subject to basic principles of natural justice. It might be thought that the current mandatory system is too complex and lengthy, and a **simpler, faster (and cheaper) system** would be an improvement, together with an **early filtering** power to cut political/vexatious complaints off at source.
- 4.15 Is there room also within the filtering process to allow an **informal referral of a complaint to the political Group** involved to consider invoking group discipline? There may be merit to be at least a filtering option eg for intermediate cases where a formal investigation/disposal may be disproportionate but there is room to ruminate on member behaviour alleged, with even a power to refilter again if no satisfactory outcome.
- 4.16 If the Council were to adopt a Code and find on complaint that a member had **failed to comply** with the Code, then the Council 'may have regard to this failure' in deciding:

STANDARDS COMMITTEE

20th April 2011

- whether to take action in relation to the member or co-opted member, and
 - what action to take.
- 4.17 However, the Bill is a bit thin on this, and does **not provide an express power to impose any particular sanctions** on members who fail to comply with a Code. It is likely to be a **power to censure/name and shame, with perhaps the Committee deciding the level of publicity**. This is in contrast to the current Standards Regime, which provides the following sanctions:
- Censure of the Member
 - Full or partial suspension either for a specified period of time (not exceeding six months) or until the member has met a requirement set by the Standards Committee (written apology, training or conciliation);
 - Restriction of the member's access to Council premises or use of Council resources;
 - Requirement to submit a written apology;
 - Requirement to undertake training;
 - Participation in conciliation.

Disclosure and Registration of Members' Interests

- 4.18 The Bill allows for Regulations requiring the Council's Monitoring Officer (Head of Legal and Democratic Services) to establish and maintain a "Register of Members' Interests" of the Council's members. It is clear that the issue of **'conflict of interests' will remain a significant plank of the future framework**.
- 4.19 These Regulations may make provision:
- (a) Specifying the financial and other interests that must be registered;
 - (b) Requiring any member who has a specified interest to disclose it before taking part in business of the Council relating to it;
 - (c) Preventing or restricting the participation of a member in any business of the Council to which an interest relates;
 - (d) For the Council to grant dispensations in specified circumstances from a prohibition;
 - (e) About the sanctions that the Council may impose on a member for failure to comply. These will not include:
 - suspension or partial suspension of a member, or
 - disqualification of a member;
 - (f) Requiring the Council to make copies of the Register of Members' Interests available to the public.

STANDARDS COMMITTEE

20th April 2011

- 4.20 Until draft Regulations are produced setting out the “financial and other interests” that will be required to be registered/declared, we can only guess how this “new” Register will differ from the existing one.

Criminalising breaches of requirements concerning interests

- 4.21 What is clear, though, in contrast to the general relaxation of the ethical framework, is the legislative intent to **amplify the importance of avoiding conflicts of interest**. Members will commit a **criminal offence** where they without reasonable excuse:
- (a) Fail to register “a financial or other interest” in accordance with the Regulations;
 - (b) Fail to disclose an interest of a specified kind before taking part in Council business relating to it; and
 - (c) Take part in Council business to which an interest relates, contrary to a prohibition imposed by the Regulations.
- 4.22 Where a member is convicted of such an offence they may be **fined up to £5,000**. In addition, **the court** may make an order **disqualifying** a person convicted from being or becoming a member of the Council or any other “relevant authority” for a period of up to five years.
- 4.23 Any prosecution for an offence must be brought by the Director of Public Prosecutions, and no proceedings may be brought more than 3 years after the date of the offence.
- 4.24 It is anticipated that the Localism Bill (which is wide-ranging, with the provisions on the Standards Regime only a very small part), may take up to a year before being brought into force. The abolition of the current Standards Regime may have a separate timescale to the rest of the Bill. **Until the relevant sections of the Localism Bill are brought into force the current statutory framework remains operative.**
- 4.25 Members are asked to consider the best approach for the Council and the questions raised earlier in the report.

5. FINANCIAL IMPLICATIONS

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

6. LEGAL IMPLICATIONS

This report considers the implications of the Localism Bill.

STANDARDS COMMITTEE

20th April 2011

7. POLICY IMPLICATIONS

There may be policy implications in due course with regard to the Council's approach to the ethical framework for Members. The present report has no direct policy implications.

8. COUNCIL OBJECTIVES

This report links to the Council priority of a Well-Managed Organisation.

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

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

- Individual Members failing to receive the necessary support and guidance on the Council's ethical framework; and
- The Council being brought into disrepute

10. CUSTOMER IMPLICATIONS

The present report is the basis for initial discussions on the possible replacement of the current Standards regime and, as such, has no direct implications

11. EQUALITIES AND DIVERSITY IMPLICATIONS

The present report is the basis for initial discussions on the possible replacement of the current Standards regime and, as such, has no direct implications

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

None identified.

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

None identified.

14. HUMAN RESOURCES IMPLICATIONS

None identified.

STANDARDS COMMITTEE

20th April 2011

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

The present report is the basis for initial discussions on the possible replacement of the current Standards regime and, as such, has no direct implications. However, the Council's arrangements for its ethical framework will have major implications for governance in due course.

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

None identified.

17. HEALTH INEQUALITIES IMPLICATIONS

None identified.

18. LESSONS LEARNT

Experience to date has demonstrated the present arrangements to be protracted which members might wish to take into consideration.

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

None identified.

20. OTHERS CONSULTED ON THE REPORT

Please include the following table and indicate 'Yes' or 'No' as appropriate.

Delete the words in italics.

Portfolio Holder	No
Chief Executive	No
Executive Director (S151 Officer)	No
Deputy Chief Executive/Executive Director – Leisure, Environment and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Director of Policy, Performance and Partnerships	No

**STANDARDS
COMMITTEE**

20th April 2011

Head of Service	Yes
Head of Resources	No
Head of Legal, Equalities & Democratic Services	Yes
Corporate Procurement Team	No

21. WARDS AFFECTED

No direct Ward relevance.

22. APPENDICES

None.

23. BACKGROUND PAPERS

There are no background papers.

AUTHOR OF REPORT

Name: The Background and Key Issues sections were prepared by Simon Mallinson, Head of Legal and Democratic Services, Worcestershire County Council for a report to the Standards and Ethics Committee, Worcestershire County Council and which was subsequently shared with District colleagues– if you have enquiries about this report please contact Clare Flanagan, Deputy Monitoring Officer, Redditch Borough Council.

E Mail: clare.flanagan@redditchbc.gov.uk

Tel: (01527) 64252 (Extn. 3173)