

STANDARDS COMMITTEE

13 MARCH 2012

STANDARDS REGIME UPDATE

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PURPOSE OF REPORT

1. To update Members on the impending changes in the standards regime, and to seek their views on the draft new Code of Conduct.

Background

2. Members may be aware that, on 15 November 2011, the Localism Act gained Royal Assent. The Act introduces a number of new powers for the Council, but also makes significant changes to the current Standards regime.
3. In particular, the Act abolishes both Standards for England and the current Code of Conduct, and instead introduces the requirement for a local Code of Conduct, based on the seven principles of public life, as set out by the Committee on Standards in Public Life. These principles are:
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty; and
 - leadership.
4. In addition, the Act imposes on the Council a duty to promote and maintain high standards of conduct, by adopting an appropriate code of conduct relating to the conduct expected of Members and co-opted members.
5. Furthermore, the Act abolishes the notion of 'personal' and 'prejudicial' interests, and instead reverts to disclosable 'pecuniary interests' and 'interests other than pecuniary interests' (with a section on 'sensitive interests'). In general, the failure

to declare a pecuniary interest, or the provision of false or misleading information, will be a criminal offence, which can lead to a fine of up to £5,000 and disqualification from holding office with the Council for up to five years.

6. In light of the above circumstances, it is necessary for the Council to review its current procedures, Code of Conduct and committee structure, to ensure compliance with the Act.

Current Arrangements

7. As Members will no doubt be aware, in accordance with section 51 of the Local Government Act 2000, the Council has adopted the national Code of Conduct for Members as part of its Constitution, which aims to ensure that Members' conduct is of an appropriate standard. It is a legal requirement that all Members of the Council agree to abide by the Code of Conduct.
8. In furtherance of the Code of Conduct, the Council currently operates a Standards Committee, which deals with strategic standards matters, together with a Standards (Initial Assessment) Sub-Committee, a Standards (Review) Sub-Committee, and a Standards (Hearings) Sub-Committee. Each of these bodies is chaired by an independent, non-elected, member.
9. In the event that the Council's Monitoring Officer receives a complaint that a Member has failed to comply with the Code of Conduct, that complaint will be referred to the Initial Assessment Sub-Committee for a decision as to whether the matter should be investigated, or whether the Council should take no further action. If the Sub-Committee considers that no further action is required, the complainant has a right to ask the Review Sub-Committee to reconsider that decision. If an investigation is carried out, the Investigating Officer's report is first presented to the Initial Assessment Sub-Committee for consideration.
10. The Investigating Officer's report may recommend that: no breach has been made out, and the Council should take no further action; or that the Member has breached the Code of Conduct, and a hearing should be held to determine the issue. If a hearing concludes that the Member has breached the Code of Conduct, it may impose sanctions on the Member, ranging from taking no further action, through the requirement for training or an apology, to the suspension of the Member for up to six months. The Member may appeal to the Adjudication Service in respect of either the finding, or the sanction, or both.
11. In addition, Members are required to complete the Register of Members' Interest, setting out those interests which they are aware of under the headings 'Personal' and 'Personal and Prejudicial', and at meetings declare either Personal or Personal and Prejudicial interests which arise as a result of either the Register, or the business being transacted at the meeting. Failure to do so may result in a breach of the Code of Conduct, amongst other things.
12. These arrangements are likely to cease on 1 July 2012, at which point the new arrangements will come into force. In any event, Standards for England has confirmed that, as from 31 January 2012, it will no longer accept new referrals or issue guidance in relation to the Code of Conduct, and will cease to exist on 31

March 2012. Any proceedings which are still with Standards for England on 31 January will be transferred back to the referring authority, which will have to deal with them in accordance with its own procedures. Similarly, any investigations which the Council is currently undertaking will be continued, but if they fall to be considered after 1 July 2012, they will need to be dealt with under the new Code of Conduct.

New Arrangements

13. It is anticipated that, on 1 July 2012, the Council will be required to adopt a new Code of Conduct, based on the seven principles set out in paragraph 2 above. Whilst the Council will be responsible for producing its own Code of Conduct, it is useful to note that the Association of County Secretaries and Solicitors (ACSeS) has prepared a 'model' code, which is attached at Appendix 1.
14. Under the 2011 Act, the Council will be required to produce a Code of Conduct for Members, and will be under a duty to 'promote and maintain high standards of conduct'. As previously mentioned, there remains a requirement for the Council to maintain a register of interests, and Members must declare their disclosable pecuniary interests within 28 days of taking office, re-election, or the interest becoming relevant to a meeting they are attending.
15. At present, the Secretary of State has yet to make any Regulations which define what a "disclosable pecuniary interest" will be, or set out what sanctions (if any) will be available (over and above those which are contained in pre-2000 local government legislation).
16. It is clear, however, that the Council must have in place arrangements for investigating allegations, and for making decisions on allegations; and as part of those arrangements the Council must appoint an Independent Person. Unfortunately, it is equally clear that the Independent Person referred to in the Act cannot be a person who has been a Member, co-opted member, or officer of the Council within the previous five years. It will, therefore, be necessary to advertise a vacancy for such an Independent Person, and appoint accordingly.

Sanctions

17. At present, the Council's Standards (Hearings) Sub-Committee has a range of sanctions available to it in the event that it concludes a Member has breached the Code of Conduct. These sanctions include: the full or partial suspension of the Member for a period of up to six months; the restriction of the Member's access to the Council's premises and/or resources (so far as is possible without interfering with the Member's ability to perform their functions as a Member); the requirement for the Member to issue a written apology; or the requirement for the Member to undergo training.
18. The ability to impose these sanctions is derived from the Standards Committee (England) Regulations 2008. However, from 1 July 2012 these explicit sanctions will no longer be available, and the Council will instead have to rely on the sanctions available to it through Common Law only. It should be noted that a

criminal sanction will exist for failure to declare a pecuniary interest, but that sanction be for the Courts, rather than the Council, to impose following conviction.

19. In light of this, ACSeS sought advice from Clive Sheldon QC on what sanctions the Council could impose. That advice indicates that the following are possibilities:
 - (a) the Council (of a committee of the Council) may issue a formal letter to a Member found to have breached the new Code of Conduct;
 - (b) the Council (of a committee of the Council) may formally censure the Member, through a motion;
 - (c) the Council may remove the Member from a committee (although the final decision on the appointment of a replacement to that committee is the responsibility of the relevant political group); or
 - (d) the Council (of a committee of the Council) may require that publicity be given to a decision that a Member has breached the Code of Conduct.
20. As can be seen, the range of sanctions which will be available under the new Code of Conduct will be limited.

Duty to Comply

21. Perhaps of greatest importance is the removal of the requirement that Members sign up to the new Code of Conduct. Under the current arrangements, just as the Council has a duty to adopt a Code of Conduct, so Members have a duty to comply with that Code of Conduct. However, whilst the Council will remain under a duty to adopt a new Code of Conduct, Members will not be legally obliged to comply with it (subject to the provisions on the declaration of pecuniary interests). This is likely to further 'water down' the effectiveness of any Code of Conduct.

Recommendations

22. With the above in mind, it is recommended that Members:
 - (a) note the contents of this report;
 - (b) make such recommendations as Members consider appropriate in respect of the draft Code of Conduct;
 - (c) agree that the issue of the contents of the new model Code of Conduct be referred to the Council's Constitution Committee, and the Council, for determination; and
 - (d) agree that an advertisement be placed, seeking two Independent Persons in accordance with the Act.

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