

NORTH LINCOLNSHIRE COUNCIL

COUNCIL

THE LOCALISM ACT 2011 – REVISED ‘STANDARDS’ REGIME

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform Council of the key changes to the ‘Standards’ regime arising from the Localism Act 2011 (Act).
- 1.2 The key points in this report are as follows:
- (i) The Localism Act 2011 makes significant changes to the system of regulation of standards of conduct of elected and co-opted members of this Council and those of Town and Parish Councils within the area.
 - (ii) The Council will be required to adopt a revised set of ‘arrangements’ for the discharge of its responsibilities under the Act. A detailed analysis of the key issues arising was the subject of a report to the Standards Committee on the 2 February 2012 (Appendix A).
 - (iii) This report seeks approval for a number of preparatory measures to be taken to progress the Council’s readiness for approval of its revised ‘Standards’ arrangements at its Annual General Meeting in May 2012.

2. BACKGROUND INFORMATION

- 2.1 The Act contains wide ranging provisions for the reform of the existing standards regime. An in depth analysis of the key issues is detailed in the report at Appendix A.
- 2.2 In summary, the Act:
- abolishes Standards for England and the national Code of Conduct.
 - removes the need to have a statutory Standards Committee with a prescribed constitution.

- abolishes the prescribed methods of dealing with complaints against members under the auspices of the Standards for England framework.
- removes the definitions, and declaration requirements, relating to personal and prejudicial interests.

2.3 Instead the Act introduces a new regime the key features of which are:

- a requirement that all councils, including Town and Parish Councils, adopt their own Code of Conduct the content of which is at their discretion save that it must be consistent with the following seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- a requirement that the Monitoring Officer establishes a register of members' interests, including those of Town and Parish Council members, which is kept at the Council's offices and is available for inspection on its website.
- a requirement for members to disclose 'disclosable pecuniary interests' (yet to be defined in regulation) with a possible criminal sanction for not doing so.
- a responsibility on the Council to adopt its own 'arrangements' for dealing with complaints that its members and those of Town and Parish Councils have failed to comply with the relevant Code of Conduct.
- a requirement that an Independent Person/s be appointed to primarily comment on any investigations for breach of the Code.
- revised grounds for the granting of dispensations.

2.4 The functions and responsibilities that the Council will be required to discharge under the new regime are non-executive and must be approved by full Council, although full Council can elect to delegate certain functions to committees, such as a freshly constituted Standards Committee, or officers, such as the Monitoring Officer.

2.5 Strictly the terms of reference of the current Standards Committee are limited to cover the existing standards regime under the Local Government Act 2000 and do not extend to the arrangements required under the Act.

2.6 The Department for Communities and Local Government have confirmed, subject to regulation, that councils should have all necessary revised 'arrangements' in place so that they can take effect from the 1 July 2012. This will mean that until this date the current Standards Committee will need to continue to discharge the existing standards regime.

2.7 Given that the Council is required to approve, and have its new 'arrangements' in place, by the 1 July 2012, this effectively means that such 'arrangements' will need to be presented to full Council for approval at its Annual General Meeting on the 15th May 2012.

- 2.8 Accordingly, this report seeks approval for a number of preparatory measures to be taken to progress the Council's readiness for implementation of its revised Standards 'arrangements'. Foremost amongst these is the need to progress, for Council's approval, the recruitment of an Independent Person/s. Given the constraints of the terms of reference of the current Standards Committee (paragraph 2.5 refers) it is proposed that a Committee of Council, comprising some or all elected members of the current Standards Committee, be established proportionally, to oversee this process with a view to making a recommendation to Council for appointment. The size and composition of this committee will need to be determined by Council. It is also proposed that this Committee work with the Monitoring Officer to address the other key issues identified in the report at Appendix A and make recommendations thereon to Council for approval.
- 2.9 It is proposed that the current Standards Committee continue to receive briefings on the progress of the measures detailed in this report.

3. OPTIONS FOR CONSIDERATION

- 3.1 The Localism Act 2011 received Royal Assent on the 15 November 2011. The Council is required under the Act to revise its current Standards regime and framework and ensure that any revised 'arrangements' are compliant with the Act.

4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 4.1 A fuller analysis of the resource implications will be undertaken once the detail of enabling statutory instruments are known and any statutory guidance is issued.
- 4.2 Initially there would appear to be resource implications associated with any decision by the Council to remunerate the Independent Person/s and arising from the requirement that the Council publishes the registers of members' interest of Town and Parish Councils on its website.
- 4.3 Once enabling regulations are published, particularly those concerning 'disclosable pecuniary interests', a training programme for elected members and the Chairs and Clerks of Town and Parish Councils will need to be resourced and established.
- 4.4 There appear to be no provisions within the Act to enable the Council to seek a contribution towards the costs of implementation from Town and Parish Councils in the area.

5 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 5.1 The Council will need to ensure that its revised standards regime /ethical governance arrangements are consistent with the requirements of the Act.
- 5.2 The Council will also need to ensure that its Constitution and particularly its Rules of Procedure are reviewed so as to ensure compliance with the Act.

6. OUTCOMES OF CONSULTATION

- 6.1 The Standards Committee has received regular verbal and written briefings on the passage of the, then, Localism Bill through parliament. The report at Appendix A supplements an earlier report to the Committee of the 1 December 2011 and represents the first detailed analysis of key issues arising from the Act which received Royal Assent on the 15 November 2011.
- 6.2 The Monitoring Officer has written to all Town and Parish Councils outlining the main revisions proposed by the Act and proposes that a copy of the report at Appendix A be sent too with a request that Town and Parish Councils comment on the key issues from their perspective. The Monitoring Officer has also written in similar terms to the East Riding and Northern Lincolnshire Local Councils Association and met with the Monitoring Officers of neighbouring authorities to discuss their respective approaches to implementation of the Act.
- 6.3 On the 2 February 2012 the Standards Committee received the report at Appendix A together with a detailed briefing thereon and assented to the recommendations being sought from Council at paragraph 7.

7. RECOMMENDATIONS

- 7.1 That a Committee of Council, comprising some or all elected members of the current Standards Committee, be established proportionally to settle the necessary terms of appointment for the Independent Person/s and to advertise, shortlist and interview and recommend an appointment thereto by Council and to work with the Monitoring Officer to form recommendations to Council on the matters detailed in paragraph 7.2; and
- 7.2 That the Monitoring Officer be instructed to prepare for Council's approval the following:
 - a draft Code of Conduct pursuant to section 28 of the Act;
 - a draft register of members' interests pursuant to section 29 of the Act;

- a draft set of 'arrangements' pursuant to section 28 of the Act, detailing, amongst other things, the procedures the Council shall adopt for dealing with standards complaints and the granting of dispensations; and
- such other recommendations as considered necessary arising from the report at Appendix A.

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Background Papers used in the preparation of this report
Localism Act 2011

NORTH LINCOLNSHIRE COUNCIL

STANDARDS COMMITTEE

THE LOCALISM ACT 2011

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To note the changes introduced to the 'Standards regime' by the Localism Act 2011.
- 1.2 To highlight the key issues that the Council will have to determine in readiness for its implementation of the new regime.
- 1.3 This report supplements an earlier outline report to Committee on the 1 December 2011.

2. BACKGROUND INFORMATION

2.1 The Localism Act 2011 (Act) makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted members. The date for implementation of these changes was proposed to be the 1 April 2012, but the CLG have recently announced that the operative date for new standards arrangements will, subject to regulation, be the 1 July 2012. At appendix A is a letter from CLG explaining the position.

2.2 It should be noted that constitutionally the functions and responsibilities that the Council will discharge under the revised 'Standards regime' are non-executive and cannot be discharged by Cabinet. This means that full Council has ultimate responsibility for their exercise and discharge but can elect to delegate certain functions to a Standards Committee (or appropriate Sub-Committees) and/or officers, such as the Monitoring Officer.

2.3 Detailed below are the main changes brought about by the Act.

Duty to promote and maintain high standards of conduct

2.4 The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

Standards Committee

2.5 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Committee. Such Committee will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result -

- 2.5.1 The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;
- 2.5.2 The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but significantly provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee;
- 2.5.3 The Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Town and Parish Councils, but the current Town and Parish Council representatives cease to hold office. The Council could simply decide to compose a Committee consisting only of its members. Alternatively, the Council may decide that it wishes to continue to involve Town and Parish Councils in such matters in which case the choice lies between establishing a Standards Committee as a Committee of the Council, with co-opted but non-voting Town and Parish Council representatives (which could then only make recommendations in respect of Town and Parish Council members), or establishing a Standards Committee as a Joint Committee with the Town and Parish Councils within the District (or as many of them as wish to participate) and having a set number of Town and Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Town and Parish Councils, where the Town and Parish Council had delegated such powers to a Joint Standards Committee). Potentially the establishment of a Joint Committee could prove logistically and administratively burdensome for this Council given the large number of Town and Parish Councils within its area.

Key Issue 1 Council will need to consider whether it wishes to set up a Standards Committee to oversee the discharge of its functions and in so doing consider what role, if any, Town and Parish Councils will have in such arrangements.

The Code of Conduct

- 2.6 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles -
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

- 2.7 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The Act also requires an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. It is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations.
- 2.8 The Act prohibits members with a DPI from participating in authority business, and the Council can adopt a Procedure Rule requiring members to withdraw from the meeting room.
- 2.9 Any new Code of Conduct will have to deal with the following matters -
- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct; and
 - Registration and disclosure of interests other than DPIs -effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

Key Issue 2 Council will need to decide what it includes in its Code of Conduct.

Arrangements for dealing with complaints

- 2.10 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of the Code both by the Council's members and by Town and Parish Council members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.

Independent Person(s)

- 2.11 The “arrangements” must include provision for the appointment by the Council of at least one Independent Person, whose views must be sought and taken into account before the Council makes a decision on an allegation it has decided to investigate. The Independent Person’s views may also be sought by a member or co-opted member whose behaviour is subject of an allegation.
- 2.12 The Independent Person cannot be a member, co-opted member or officer of the authority, a member or relative or close friend of any of those people, nor can the Independent Person have been a member, co-opted member or officer of the Council at any time in the last five years.
- 2.13 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly,

there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

- 2.14 The Act permits the payment of allowances and expenses to the Independent Person. As the Independent Person is not a member of the Council or of its Committees or Sub-Committees, any remuneration would fall outside the scheme of members' allowances. It would be appropriate to undertake a proper review of the function of the Independent Person before setting any remuneration.
- 2.15 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council.

Assessment and Determination

- 2.16 The Act repeals the requirements for separate Assessment and Determination Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

Decision whether to investigate a complaint

- 2.17 The Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out the more trivial and minor complaints. However, the Act does afford more flexibility to authorities in the arrangements they might wish to adopt. It may therefore be sensible to take advantage of, and apply, this increased flexibility to the arrangements the Council adopts in determining whether to investigate a complaint. For instance the Council could in the case of Town and Parish Council complaints not involving members of the Council, delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. A similar delegation could be afforded concerning complaints against members of the Council although it might be considered that the existing practice of referring such complaints to the Standards Committee (or more appropriately a constituted Assessment Sub-Committee) be retained. If any such functions are delegated to the Monitoring Officer it would seem appropriate that his discharge of the same is the subject of, say, a quarterly report to the Standards Committee which would enable him to report on the exercise of his delegations and report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

“No Breach of Code” finding on investigation

- 2.18 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to a Determination Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to the Standards Committee if he feels it appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him/her to get an overview of current issues and pressures, and that the Monitoring Officer provide a summary report of each such investigation to the Standards Committee for information.

“Breach of Code” finding on investigation

- 2.19 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to a summary report for information to the Standards Committee.
- 2.20 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (or a Hearings Panel constituted as a Sub-Committee of the Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearings Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

Action in response to a Hearing finding of failure to comply with Code

- 2.21 The Act does not give the Council or its Standards Committee any powers to impose sanctions against members, so, where a failure to comply with the Code of Conduct is found, the range of actions which the Council can take in respect of the member is limited and must be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following -
- 2.21.1 Reporting its findings to Council *[or to the Town and Parish Council]* for information and publicising the same through the media;
 - 2.21.2 Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 2.21.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

- 2.21.4 Instructing the Monitoring Officer to *[or recommend that the Town and Parish Council]* arrange training for the member;
- 2.21.5 Removing the member *[or recommend to the Town and Parish Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Town and Parish Council]*;
- 2.21.6 Withdrawing *[or recommend to the Town and Parish Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 2.21.7 Excluding *[or recommend that the Town and Parish Council 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.
- 2.22 There is a particular difficulty in respect of Town and Parish Councils, as the Act gives the Standards Committee no power to do any more in respect of a member of a Town and Parish Council than make a recommendation to the Town and Parish Council on action to be taken in respect of the member. Town and Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Town and Parish Councils, and seek the delegation of powers from Town and Parish Councils to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of a particular Town or Parish Council.

Appeals

- 2.23 There is no requirement to put in place any appeals mechanism against such decisions. The decision would 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 authority had no power to impose.

Key Issue 3 Council will need to decide what 'arrangements' it wishes to adopt for dealing with standards complaints and for taking action where a member is found to have breached its Code of Conduct.

Key Issue 4 Council will need to consider how many Independent Persons it wishes to appoint, the arrangements for interviewing applicants and subsequent referral to Council for appointment and any remuneration/allowances it wishes to bestow.

The Register of Members' Interests

- 2.24 The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Town and Parish Councils, which also have to be open for inspection at the Council offices and on the Council's website.

- 2.25 At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.
- 2.26 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 2.27 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Town and Parish Council, available for inspection at the Council offices and on the Council's website and, where the Town and Parish Council has a website, provide the Town and Parish Council with the information required to enable the Town and Parish Council to put the current register on its own website.

Registration of Interests on election or co-option

- 2.28 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.
- 2.29 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 2.30 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
- 2.31 The preparation and operation of the register, not just for this authority but also for each Town and Parish Council, is likely to be a considerable administrative task, especially where different Town and Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is currently no provision for the Council to recover any costs from Town and Parish Councils.

Disclosure of Interests and Withdrawal from Meetings

- 2.32 As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So -
- 2.32.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.
- 2.32.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the

member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, members of the public attending the meeting will in future need to read the register of members’ interests, as registered interests may no longer be disclosed at the meeting.

- 2.33 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.
- 2.34. If a member has a DPI in any matter, he/she must not -
 - 2.34.1 Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - 2.34.2 Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 2.35 Failure to comply with these requirements (paragraphs 2.32.2, 2.33 or 2.34) becomes a criminal offence, rather than leading to sanctions. The Director of Public Prosecutions is responsible for approving such prosecutions which are punishable on conviction by a fine of up to £5000 and/or disqualification for up to five years’.
- 2.36 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.
- 2.37 The requirement to withdraw from the meeting room can be covered by Procedure Rules, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.
- 2.38 Under existing executive arrangements matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers.
- 2.39 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter -
 - 2.39.1 Unless the DPI is already entered in the register of members’ interests or is subject to a “pending notification”, he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
 - 2.39.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 2.40 Procedure Rules can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.

- 2.41 It should be noted that the Act effectively removes the rights of a member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct

Key Issue 5 Council will need to decide whether to adopt a procedure rule providing that a member withdraw from any meeting where they have a disclosable personal interest in a matter under consideration.

Sensitive Interests

- 2.42 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
- 2.43 So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- 2.44 If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

Dispensations

- 2.45 The provisions on dispensations are significantly changed by the Act.
- 2.46 At present, a member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds -
- 2.46.1 That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of the Standards Committee); and
- 2.46.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).
- 2.47 In future, a dispensation will be able to be granted in the following circumstances -
- 2.47.1 That so many members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;
- 2.47.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in

which case, it would be inappropriate to grant a dispensation to enable them to participate;

- 2.47.3 That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- 2.47.4 That, without a dispensation, no member of the Cabinet would be able to participate in this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- 2.47.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 2.48 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 2.49 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Act gives discretion for this power to be delegated to the Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 2.47.1 and 2.47.4 are fairly objective so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted 'at the door of the meeting'. Grounds 2.47.2, 2.47.3 and 2.47.5 are rather more objective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with the Standards Committee, after consultation with the Independent Person.

Key Issue 6 Council will need to decide what arrangements it wishes to adopt for the granting of dispensations.

Transitional Arrangements

- 2.50 Regulations under the Act will provide for -
- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
 - b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
 - c. removal of the power of suspension from the start of the transitional period; and
 - d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

3. KEY ISSUES FOR CONSIDERATION

- 3.1 As mentioned at paragraph 2.1 it is the responsibility of full Council to determine the revised standards arrangements that the Council wishes to adopt under the Act. In so doing Council may elect to delegate certain functions to a Committee, Sub-Committee or officer.
- 3.2 The key issues that Council will need to determine are as highlighted in this report and will be the subject of further reports to Council for authorisation to proceed in due course. Indeed it is proposed that this report form the main body of a report to Council on the 21st February 2012.

4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 4.1 A fuller analysis of the resource implications will be undertaken once the detail of enabling statutory instruments and guidance are issued.
- 4.2 Initially there would appear to be a resource implication which will require further analysis if the Council decides to remunerate any Independent Person/s that it appoints. Moreover, a comprehensive training programme aimed at members of this Council and possibly the Clerks and Chairs of Town and Parish Councils will need to be resourced and established.
- 4.3 There appear to be no provisions within the Act to enable the Council to seek a contribution towards the costs of implementation from Town and Parish Councils within the area.

5. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 5.1 The Council will need to ensure that its revised Standards /ethical governance arrangements are consistent with the requirements of the Act.
- 5.2 The Council will need to ensure that its Constitution and particularly its Rules of Procedure are reviewed so as to ensure compliance with the Act.

6. OUTCOMES OF CONSULTATION

- 6.1 The Committee has hitherto received written and verbal updates on the passage through parliament of this legislation. This report provides a more detailed analysis of the issues and builds upon the report received by the Committee on the 1 December 2011.
- 6.2 The Council has established a Localism Project Group under the lead of the Chief Executive to oversee, co-ordinate and develop its response to the Act. The contents of this report will be fed into that process.
- 6.3 The Monitoring Officer has written to all Town and Parish Councils providing a briefing on the Act based upon the report to Committee on the 1 December 2011 and it is proposed that a copy of this report, or a summarised version, be provided too. He has also written in similar terms to ERNLLCA and has instigated meetings with the Monitoring Officers of neighbouring authorities to discuss their respective approaches to implementation of the Act.

7. RECOMMENDATIONS

It is recommended that:

- 7.1 The Committee notes the contents of this report and provides its observations on the key issues identified therein;
- 7.2 The Monitoring Officer continues to disseminate relevant information on the 'Standards' related provisions in the Act to Town and Parish Councils within the Council's area; and
- 7.3 Appropriate reports on the key issues identified in this report are presented to Council for consideration and determination.

DIRECTOR CORPORATE AND COMMUNITY SERVICES

Civic Centre
Ashby Road
SCUNTHORPE
North Lincolnshire
DN16 1AB
Author: Will Bell, Monitoring Officer
Date: 24 January 2012

Background Papers used in the preparation of this report: Bevan Brittan note

APPENDIX A

Text of Letter of 22 December 2011 from Paul Rowsell, Deputy Director – Democracy at the Department for Communities and Local Government to Philip McCourt, President of the Association of Council Secretaries and Solicitors

22 December 2011

Philip McCourt
President
ACSeS
Afon Building
Worthing Road
Horsham
West Sussex
RH12 1TL
Our Ref:
Your Ref:

Dear Mr McCourt,

New standards and conduct arrangements for local authority members

I am writing about how Ministers are minded to introduce the new standards and conduct arrangements for local authority members created by the Localism Act 2011, and to invite your association to discuss with us the practical details of implementing these new arrangements.

As has been announced in Parliament, the Government expects the Standards Board for England will cease its regulatory functions on 31 January 2012, and that the Board will be abolished no later than 31 March 2012. Any complaints being dealt with by the Board on that date will be transferred back to the authority that originated the complaint. The local authority in question will then be under an obligation to handle the case using the local elements of the current regime, namely the statutory standards committee.

We envisage that the remaining local elements of the current regime, including statutory standards committees with the power to suspend councillors, will be abolished on 1 July 2012.

From 1 July forward, all standards matters – including consideration and determination of outstanding complaints made during the period the Standards Board regime was operating - will be the responsibility of local authorities, to be handled under the new arrangements. 1 July will also see the new standards arrangements, which include a 'Nolan-based' code, the involvement of an independent person in allegations of misconduct, and a new criminal offence for failing to declare or register interests, coming into force.

Such a timetable would seem appropriate given the timing of councils' elections and annual meetings. It also recognises that local authorities will have to take action to implement the changes to the standards arrangements. For example, authorities will need sufficient time to adopt any new code and procedures. Moreover, they will need time to advertise for and then appoint an 'independent person' and put in place arrangements for handling allegations of breaches of their code. Finally, principal authorities will have to put in place, and agree, arrangements with parish councils for both a code and register of interest related activity.

We would welcome the opportunity to discuss the implementation of the new arrangements with your association early in the New Year; please let either Steve McAllister (stephen.mcallister@communities.gsi.gov.uk) or Rosalind Kendler

rosalind.kendler@communities.gsi.gov.uk) have details about whom to contact to make arrangements for this.

I am writing in similar terms to the Local Government Association, the National Association of Local Councils and the Society of Local Authority Chief Executives, and am copying this letter for information to Tim Leslie, Chief Executive of Standards for England.

Yours sincerely,

Paul Rowsell

Contact: Mr W S Bell

Direct Dial: (01724) 29

Your ref:

Our ref: WSB/LMK

Date:

Dear Colleague

RE: LOCALISM ACT 2011 - 'STANDARDS'

I write further to my letter to you of the 4th January 2012. Enclosed for your consideration is a further report that I have prepared on the changes to the current Standards regime arising from the Localism Act 2011. This report was presented to my Council's Standards Committee on the 2nd February and will form the basis of a report to full Council on the 21st February next. It is by necessity very detailed and raises a number of key issues that my and your Council will need to determine.

The Government is expected to confirm that implementation of the revised standards arrangements will need to be in place to come into effect from the 1st July 2012. This means that, so far as my Council is concerned, we are working to a relatively tight timetable with my Council having to approve its revised arrangements by the time of its Annual General Meeting in May 2012.

I hope that the issues I've flagged up in the report are relatively self explanatory. Some require more attention than others. In particular, from your Council's perspective, it occurs to me that you'll need to give particular consideration to the following:-

- whether you wish to adopt your own Code of Conduct or adopt the one that my Council will approve. I gather that there is some discussion between respective stakeholders including the NALC and ACSeS of a model code being produced for the 'sector', although quite when this will be is not clear. There is some recognition though that in the interests of consistency and uniformity Parish and Town Councils may wish to carefully consider adopting the Code of their principal authority, in this case my Council's. Ultimately though this is a matter for your Council to determine.
- what involvement your Council would wish to have in any revised Standards Committee arrangements. At the moment my Council is considering the various options but what is clear is that under the Act Parish and Town Council representatives on any newly constituted Standards Committee would not have the right to vote unless the Committee was a joint committee with the respective Town or Parish Council concerned. Given that in our area, there are 57 Town

and Parish Council's/Meetings, this potentially presents a real administrative challenge not least in arranging the nomination of the respective members but also the convening of so many committees.

- the revised requirements concerning the register of members' interests. Under the Act, the Monitoring Officer will be responsible for establishing a register of members' interests not only for members of this Council but also those of members' of Town and Parish Councils within the area. The Monitoring Officer will also be responsible for ensuring that a copy of each register is available for inspection at the Council's offices and is published on the Council's website. Save for the new concept of 'disclosable pecuniary interests' (which are yet to be defined in regulations) what interests will be required to be registered will be governed by what is prescribed in each councils Code of Conduct. If Town and Parish Councils decide to adopt their own Codes of Conduct with differing interest requirements, this may make the establishment of a revised register of members' interests much more difficult and confusing for members. Again, such confusion would, arguably, be mitigated if Town and Parish Councils were minded to adopt this Council's Code of Conduct so that the registration requirements are consistent across the area.

I shall, of course, be pleased to receive your observations on these points which you will no doubt wish to discuss with your members and the professional associations that advise you. I will be sending a copy of my report to ERNLLCA for their observations too.

Once the respective regulations and guidance, if any, are issued, I'll be in touch further to discuss what training provision needs to be made.

I am conscious that we are all working to relatively tight time scales and appreciate your assistance in these matters. I hope that this is of assistance.

Yours sincerely,

Will Bell
Assistant Director: Democratic & Legal
Monitoring Officer