

## **THE NEW STANDARDS REGIME**

### **SUMMARY**

- 1.1 The report sets out the new Standards regime under the Localism Act 2011 which will come into effect on 1 July 2012.
- 1.2 The report details what these fundamental changes are and, where the Council has discretion, informs Members of the views of the Scrutiny Management Commission and the current Standards Committee on such issues as;
  - ❖ What Code of Conduct should be adopted by the Council (See para 4.8 to 4.18).
  - ❖ The membership of the new Standards Committee and in particular how many “Independent Persons” should be appointed to it (see para 4.19 to 4.29)
  - ❖ The new procedure for processing and considering complaints about breach of the code of conduct. (See paras 4.30 to 4.32 and Appendix 6)
- 1.3 In addition Monitoring Officers from the Derbyshire Councils have met to try and agree a common approach to the new regime and their deliberations are in paras 4.34 to 4.37.
- 1.4 Finally the new position on registerable and declarable interests, so far as it is known, is set out in paras 4.38 to 4.41

### **RECOMMENDATION**

- 2.1 That from 1 July 2012, Council;
  - 2.1.1 adopts the current Model Code of Conduct at Appendix 2.
  - 2.1.2 establishes a Standards Committee with five elected members, two Independent Persons and two co-opted independent members
  - 2.1.3 adopts the procedure for processing and considering complaints for breaches of the Code of Conduct attached at in Appendix 6.

- 2.1.4 gives the Monitoring Officer and the Standards Committee delegated authority to deal with complaints about breaches of the Code in accordance with the procedure at Appendix 6.
- 2.2 gives the Monitoring Officer authority to advertise for the appointment to the two Independent Persons posts
- 2.3 gives the Chair of the Standards Committee and two other members authority to short list and interview candidates for the two Independent Persons posts and to make recommendations to the Council for their appointment and the appointment of the two co-opted independent members.
- 2.4 asks the Monitoring Officer to bring a further report on the registration and disclosure of Members' interests once the new statutory Regulations have been published.

## **REASONS FOR RECOMMENDATION**

- 3.1 The old model code is comprehensive and well understood by members, is backed up by detailed advice issued by the Standards Board for England and is favoured by the majority of Derbyshire Councils.
- 3.2 The proposed new structure of the Standards Committee mirrors as far as possible the current arrangement and the composition reflects the views of both the Scrutiny Management Commission and the current Standards Committee.
- 3.3 The proposed new procedure for dealing with complaints about breaches of the Code means they will be dealt with more quickly and efficiently and the procedure is recommended by the current Standards Committee and the Derbyshire Monitoring Officers Group.
- 3.4 It will be necessary to have the two independent persons appointed by or soon after 1 July
- 3.5 It is not possible to introduce changes to the Council's current requirements on disclosure of members' interests until the new statutory regulations are issued.

## **SUPPORTING INFORMATION**

### **The New Standards Regime: Background**

- 4.1 The Localism Act 2011 has made some fundamental changes to the standards regime introduced by Local Government Act 2000. In summary it has;
- ❖ Abolished Standards for England (formerly the Standards Board for England) – on 31 March 2012
  - ❖ Withdraws the requirement for Local Authorities to have a Standards Committee – 30 June 2012
  - ❖ Abolishes the role of (voting) independent members and replaced it with a diminished and non voting role for “at least one Independent Person” – 30 June 2012
  - ❖ Retains the obligation on Councils to have a Member Code of Conduct but gives them more freedom to decide what is in it.
- 4.2 The Act requires Local Authorities to promote and maintain high standards of conduct by elected and co-opted members and have in place arrangements to investigate and make decisions on allegations of breach of the Code of Conduct. Therefore even though the requirement to have a Standards Committee is removed the likelihood is that most, if not all, authorities will retain one in one form or another. However the sanctions it can impose are much reduced (see para 12 of Appendix 6)
- 4.3 Finally the Act, replaces personal and prejudicial interests with Disclosable Pecuniary Interests (DPI), which have still to be defined, and makes it a criminal offence to participate or vote on a matter where the member has a DPI.

#### **Derby's Consideration of these Issues**

- 4.4 Following a request from the Governance Committee in February 2011 the Council's Scrutiny Management Commission undertook, over the summer and autumn of 2011, a comprehensive review of the new ethical standards and how best they should be applied in Derby.

- 4.5 The Commission gathered evidence from elected members, independent members of the Standards Committee, senior Council Officers and expert external witnesses. Having considered this evidence and debated the issues the Commission decided at its meeting on 13 December 2011 to make the following recommendations in relation to the new standards regime;
- ❖ To adopt a Local Code of Conduct (the Localism Bill was subsequently amended to make such a code a requirement).
  - ❖ To retain the Standards Committee in its current form with four Independent Members and three elected Members.
  - ❖ To streamline the Standards Committee process for considering complaints against Members
  - ❖ To change the procedure to allow Councillors to receive details about the complaints made against them when they are received by the Monitoring Officer.
  - ❖ Approach other peer authorities with a view to having reciprocal arrangements to undertake each others investigations.
- 4.6 At its meeting on 25 January 2012 Full Council considered and agreed the first two of these recommendations. However the form of the Code of Conduct has still to be approved and, because of the detailed provisions in the Act, the make-up of the Standards Committee will have to be revisited.
- 4.7 The Council's current Standards Committee, of three elected Members and four independent members, considered the matter at its meeting on 25 April 2012 and unanimously recommended to Full Council that;
- ❖ The current model code be adopted
  - ❖ The new Standards Committee should be made up of five elected members, two independent persons and two co-opted independent members
  - ❖ The new procedure for processing and considering complaints at Appendix 6 should be adopted.

### **Code of Conduct**

- 4.8 Under the Local Government Act 2000 Local Authorities were obliged to adopt the model code of conduct, which Derby did. This is attached at Appendix 2.

- 4.9 The Localism Act repeals the Model Code but Council's will still be required to have a new Code of Conduct, though they will have a discretion as to what is in it provided it is consistent with the seven "Nolan" principles of standards in public life;
- ❖ Selflessness
  - ❖ Integrity
  - ❖ Objectivity
  - ❖ Accountability
  - ❖ Openness
  - ❖ Honesty
  - ❖ Leadership
- 4.10 The Code must also make provision for the registration and disclosure of pecuniary and non-pecuniary interests, the statutory regulations for which are still to be made (section 28(2)).
- 4.11 Views on what the new Codes should look like vary dramatically. At one end of the spectrum there is an argument for retaining the existing model code on the basis that everyone, especially Members are familiar with it and there is a bank of advice on how it should be interpreted and applied from the Standards Board for England.
- 4.12 At the other end of the scale is the draft code sent to Local Authorities by the Communities and Local Government Department (CLG) on 11 April 2012. CLG compare their "lighter touch" code with the old "top down centrally imposed regime that became a vehicle for vexatious complaints". The CLG Code and covering letter are attached at Appendix 3
- 4.13 In CLG's view this "lighter touch" version, *"will ensure higher standards in public life, prevent corruption and put a stop to petty vexatious complaints that consume local authority resources and damage the reputation of local government"*.
- 4.14 The Local Government Association (LGA) have drafted and issued on 10 April 2012 a "template Code of Guidance Note" which is very similar in style and format to the CLG version. The LGA template is attached at Appendix 4
- 4.15 The covering email sent out by LGA, also attached at Appendix 4, comments, *"...the template contains two parts of a principles based, outcomes focused code of conduct. Page 1 provides the principles and page 2 provides the outcomes the principles seek to achieve. Absent are the indicative behaviours that are required to produce the outcomes. However.....many indicative behaviours are already incorporated in their existing documentation for dealing with member-officer relations, use of Council resources, information management, standing orders, etc"*.
- 4.16 However the covering email adds, *"it may well be that some Councillors and indeed Monitoring Officers would prefer the traditional Code of Conduct model with more precise do and don'ts...."*

- 4.17 Finally the Association of Council Secretaries and Solicitors (ACSeS) produced an earlier version which fell between the comprehensive and familiar Model Code of Conduct and the lighter touch/outcomes driven CLG and LGA examples. Its advantages are that it is shorter than the model code but against that it does not include key issues on bullying and equalities. This ACSeS version is attached at Appendix 5
- 4.18 Once the Code is adopted it must be published in a manner likely to bring it to the attention of the public (section 25(10)).

### **Membership of the Standards Committee/Independent Person**

- 4.19 The recommendation of the Council's Scrutiny Management Commission was that membership of the Council's Standards Committee should remain as it is; four independent members and three elected members. This recommendation was accepted by Full Council (see para 4.6)
- 4.20 However the detailed provisions of the Localism Act (Section 28) do not allow for this. Instead they provide that any Local Authority's arrangements for investigating allegations for breach of its Code of Conduct must include provision for the appointment of "at least one Independent Person"
- 4.21 The Act gives discretion to appoint one or more "Independent Persons" but places restrictions on who they can be. They cannot be;
- (1). A member, co-opted member or officer of the authority
  - (2) A relative or close friend of any of those in category (1)
  - (3) Anyone who has been a member, co-opted member or officer of the authority at any time in the previous 5 years.
- 4.22 This last restriction is particularly unhelpful as it means that all current independent members of the Standards Committee cannot be an "Independent Person" under the new regime, so all their experience and expertise will be lost. Leading Counsel have confirmed that this is the case.
- 4.23 ACSeS have however been told by CLG that the Government is minded to make at least transitional provision to allow people who have been independent members of an existing Standards Committee to be appointed as an "Independent Person" but only for a limited time span. They could however seemingly be appointed as co-opted members.

4.24 Before anyone is appointed as an “Independent Person”;

- ❖ The Council must advertise the vacancy
- ❖ Interested persons must submit an application
- ❖ The persons appointed must be approved by Full Council

### **Role of Independent Person**

4.25 Unlike Independent Members of the current Standards Committee the new Independent Person(s) will not be able to vote nor can they be Chair of the Committee. Their views must merely be “taken into account” when the Monitoring Officer or Committee decides an allegation of breach of the Code should be investigated.

4.26 In relation to any other decision the Monitoring Officer or Standards Committee **may** take/seek the Independent Person’s views but are not obliged to.

4.27 Finally and somewhat bizarrely the Member who is the subject of the allegation/complaint may see the Independent Persons views.

4.28 In summary the new provisions will mean;

- ❖ All current co-opted members will cease to hold office on 30 June 2012
- ❖ The Chair of the Standards Committee will always be an elected member.
- ❖ Non Council Members of the Committee (Independent Person) will have no voting rights but their views must be sought before an investigation takes place.
- ❖ The potential composition of Committee will be governed by the usual “Widdicombe” proportionally rules unless agreed otherwise by Full Council with no Member voting against.
- ❖ The present restriction on only one member of the Executive (Cabinet) being on the Committee has been removed so more could be.

4.29 Taking all of this into account the proposal is that the new Standards Committee will comprise;

- ❖ 5 elected members, one of whom will be the Chair
- ❖ 2 independent persons
- ❖ 2 co-opted independent members

This will potentially allow for the knowledge and experience of at least two of the current four independent members to be retained while still complying with the statutory requirements. This composition reflects the general views of the Scrutiny Management Commission and the recommendations of the current Standards Committee.

### **Procedures for Considering and Investigating Complaints**

- 4.30 The Act requires that the Council must adopt “arrangements” for dealing with complaints of breach of the Code of Conduct and that such complaints can only be dealt with in accordance with such arrangements. Therefore these arrangements must be set out in some detail together with the actions that can be taken against a member who is found to have failed to comply with the Code.
- 4.31 Under the old standards regime there were detailed statutory regulations about the processes that had to be followed. These were often considered to be over prescriptive, inflexible and lengthy. They are repealed by the Act and Councils are now free to decide their own procedures.

4.32 The opportunity has therefore been taken to revise and simplify the proposed procedure. In particular it is proposed that;

- (1). The Member who is the subject of the complaint has a right to be given a summary of the complaint within 5 days of it being received by the Monitoring Officer.
- (2). The Monitoring Officer (MO) in consultation with the Independent Person, will take the initial decision on whether the complaint requires investigation, not an assessment sub committee
- (3). The MO can decide to try to resolve the matter without the need for investigation (e.g. by an apology)
- (4). If there is an investigation and the finding is no breach of the Code the MO has the discretion, in consultation with the Independent Person, to decide to take no action or refer to the Standards Committee.
- (5). Where there is an investigation and the finding is there has been a breach the matter **must** be referred to the Standards Committee for the hearing.
- (6). The decisions of the MO or Standards Committee will be final.
- (7). The MO will every 6 months take a report to the Standards Committee giving details of;
  - ❖ Number of complaints received and brief details
  - ❖ How they are progressing
  - ❖ What decisions have been made
  - ❖ What action has been taken

4.33 The proposed new procedure aimed at meeting the Scrutiny Managements Commission recommendations to streamline the present complaints procedure and give it greater transparency is attached at Appendix 6

### **Derbyshire Councils Joint Approach**

4.34 One of the Scrutiny Management Commissions other recommendations was to approach peer authorities to see if we could undertake each others investigations and thereby reduce costs. To this end meetings of Monitoring Officers or their deputies from nine authorities in Derbyshire were held on 7 Feb 2012, 16 April and 8 May.

- 4.35 The main aim of these meetings was to try and see if we could agree a joint approach to Codes of Conduct and the procedure for investigating complaints. Such a common approach would obviously help in dealing with each others complaints.
- 4.36 On the issue of the Code of Conduct the majority favoured the old model with others favouring the LGA version.
- 4.37 All agreed to adopt the procedure for progressing and considering complaints (Appendix 6)
- Registerable Interests**
- 4.38 The Localism Act abolishes the concepts of personal and prejudicial interests and replaces them with “Disclosable Pecuniary Interests” (DPIs). At present it is not known what DPIs will comprise but they are likely to be broadly equivalent to the current prejudicial interests.
- 4.39 The Monitoring Officer is required to set up and maintain such a register of interests which will be open for public inspection and members must register their DPIs within 28 days of election but there is no ongoing obligation to do so.
- 4.40 Where members have a DPI they must withdraw when that matter is considered at any Committee, Council or Cabinet meeting. However in a fundamental change from the current arrangements the Act says if a Member has a DPIs he/she does not have to disclose it at the meeting if he/she has already registered it. Council’s could though make such declaration at meetings a requirement under their Code of Conduct.
- 4.41 Where a member has a DPI he/she will be committing a criminal offense if, without reasonable excuse, he/she participates in any discussion on the matter or votes on it. Failure to withdraw will however only be a breach of the Code of Conduct.

<b>OTHER OPTIONS CONSIDERED</b>
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- 5.1 To adopt one of the other Codes of Conduct but they were considered to lack the necessary detailed guidance.
- 5.2 To not have a Standards Committee but to instead appoint some other body, such as the Audit and Accounts Committee, to undertake investigation of and decisions on breaches of the Code of Conduct but it is considered that a specialist Standards Committee has worked well in Derby.
- 5.3 To only have one independent person on the new Standards Committee and no other independent members. This option would mean there could be potential conflicts of interest if the member of the subject of the complaint used his/her statutory right to consult the only Independent Person. In addition it is considered that the independent members in Derby have made a valuable contribution to consideration of complaints, offering a different perspective to members, and that should continue.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Stuart Leslie – Director of Legal and Democratic Services Not applicable Not applicable Not applicable Not applicable
<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Name Stuart Leslie 01332 643616 e-mail <a href="mailto:stuart.leslie@derby.gov.uk">stuart.leslie@derby.gov.uk</a> None Appendix 1 – Implications Appendix 2 – Old Model Code of Conduct Appendix 3 – CLG Code of Conduct Appendix 4 – LGA Template Code and Guidance Note Appendix 5 - ACSeS draft Code of Conduct Appendix 6 – Proposed Procedure for processing and considering complaints

<b>IMPLICATIONS</b>
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**Financial and Value for Money**

- 1.1 Consideration will have to be given to what allowance should be paid to the Independent Persons

**Legal**

- 2.1 These are included within the main body of the report

**Personnel**

- 3.1 None arising directly from this report

**Equalities Impact**

- 4.1 All Derby people will benefit from an effective Standards Committee

**Health and Safety**

- 5.1 None arising directly from this report

**Environmental Sustainability**

- 6.1 None arising directly from this report

**Asset Management**

- 7.1 None arising directly from this report

**Risk Management**

- 8.1 None arising directly from this report

**Corporate objectives and priorities for change**

- 9.1 This report has the potential to link with all the Council's Corporate Objectives

