

Open

# **Ethics and Standards**

## **Agenda**

5.30 pm  
Monday 16th April 2012  
The Earl Baldwin Suite  
Duke House, Clensmore Street, Kidderminster



## Ethics and Standards

### Members of Committee:

Councillor G W Ballinger

Councillor H E Dyke

Councillor M J Hart

Councillor C D Nicholls

Councillor R Bishop

Councillor D R Godwin

Councillor M B Kelly

Councillor N J Thomas

### Information for Members of the Public:

**Part I** of the Agenda includes items for discussion in public. You have the right to request to inspect copies of Minutes and reports on this Agenda as well as the background documents used in the preparation of these reports.

**Part II** of the Agenda (if applicable) deals with items of "Exempt Information" for which it is anticipated that the public may be excluded from the meeting and neither reports nor background papers are open to public inspection.

There are particular circumstances when the Ethics and Standards Committee may exclude the public, which are in addition to those available at meetings of the Council, its Cabinet and Committees etc. These apply when the Ethics and Standards Committee considers the following:

Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.

Information which is subject to any obligation of confidentiality.

Information which relates in any way to matters concerning national security.

### Declarations of Interest - Guidance Note

#### Code of Conduct

Members are reminded that under the Code of Conduct it is the responsibility of individual Members to declare any personal or personal and prejudicial interest in any item on this agenda. A Member who declares a personal interest may take part in the meeting and vote, unless the interest is also prejudicial. If the interest is prejudicial, as defined in the Code, the Member must leave the room. However, Members with a prejudicial interest can still participate if a prescribed exception applies or a dispensation has been granted.

#### Section 106 of the Local Government Finance Act 1992

If any Member is two months or more in arrears with a Council Tax payment, they may not vote on any matter which might affect the calculation of the Council Tax, any limitation of it, its administration or related penalties or enforcement.

### For further information:

If you have any queries about this Agenda or require any details of background papers, further documents or information you should contact, Penny Williams, Civic Centre, Stourport-on-Severn. Telephone:01562 732728 or email [penelope.williams@wyreforestdc.gov.uk](mailto:penelope.williams@wyreforestdc.gov.uk)

Wyre Forest District Council

Ethics and Standards

Monday 16th April 2012

The Earl Baldwin Suite, Duke House, Clensmore Street, Kidderminster

Part 1

Open to the press and public

Agenda item	Subject	Page Number
1.	<b>Apologies for Absence</b>	
2.	<b>Appointment of Substitute Members</b> To receive the name of any Councillor who is to act as a substitute, notice of which has been given to the Director of Legal & Corporate Services, together with the name of the Councillor for whom he/she is acting.	
3.	<b>Declarations of Interest</b> In accordance with the Code of Conduct, to invite Members to declare the existence and nature of any personal or personal and prejudicial interests in the following agenda items. Members should indicate the action they will be taking when the item is considered.  Members are also invited to make any declaration in relation to Section 106 of the Local Government Finance Act 1992.  (See guidance note on cover.)	
4.	<b>Minutes</b> To confirm as a correct record the Minutes of the meeting held on the 5th December 2011.	4
5.	<b>The Localism Act 2011 – The Amended Standards Regime</b> To receive a report from the Director of Localism and Community Assets on the requirements of the Localism Act 2011 to replace the current Member Conduct regime.	6
6.	<b>To consider any other business, details of which have been communicated to the Director of Legal and Corporate Services before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</b>	
7.	<b>Exclusion of the Press and Public</b> To consider passing the following resolution: “That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of “exempt information” as defined in the paragraph 1 of Part 1 of Schedule 12A to the Act”.	

WYRE FOREST DISTRICT COUNCIL

ETHICS AND STANDARDS

THE EARL BALDWIN SUITE, DUKE HOUSE, CLENSMORE STREET,  
KIDDERMINSTER

5TH DECEMBER 2011 5.30 PM

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**Present:**

Councillors: G W Ballinger, R Bishop, H E Dyke, D R Godwin, M J Hart,  
M B Kelly, C D Nicholls, N J Thomas.

**Independent Members:**

Rev J A Cox (Chairman), Mrs C A Noons (Vice-Chairman) and T J Hipkiss and  
R Reynolds.

**Observers:**

Councillor P Dyke

- ES.21 Apologies for Absence**  
There were no apologies for absence.
- ES.22 Appointment of Substitutes**  
No substitutes were appointed.
- ES.23 Declaration of Interests**  
No declarations of interest were made.
- ES.24 Minutes**

**Decision: The minutes of the meeting held on 21st October 2011 be confirmed as a correct record and signed by the Chairman.**

- ES.25 Code of Conduct and Abolition of the Standards Board**  
A report was considered from the Director of Legal and Corporate Services on the abolition of the Standards Board for England and the draft Code of Conduct.

The Director outlined the content of the report and advised Members of the planned abolition of the Standards Board and that Councils in Worcestershire were working together to produce a draft code that was common to all.

Members of the Committee discussed the draft code including the need to consult with the Parish Councils in Wyre Forest. Members agreed that the Code needed to be easy to understand and follow and with appropriate sanctions. Moreover, pecuniary and none pecuniary interests were returning.

Members were advised of the timetable and were asked to send any comments regarding the Code to the Director of Legal and Corporate Services. Members also recognised that the previous code worked well, and there was a need to build on what was already there.

**Decision:**

1. That the report be noted.
2. That the Monitoring Officer continues to work with other Worcestershire Councils to agree a final version of the Code of Conduct with the view of bringing the same back to the Committee for discussion and approval.

**ES.26 Complaints to the Local Government Ombudsman**

The Committee received a report from the Director of Community and Partnership Services on the outcome of complaints to the Local Government Ombudsman for the period April 2010 to March 2011.

**Decision: The report be noted.**

**ES.27 Outcome of Assessment Sub-Committee Meeting**

A report was considered from the Monitoring Officer informing Members of the Ethics and Standards Committee of the outcome of the recent Assessment Sub-Committee meeting.

Members of the committee were advised of the process and outcome of the hearing including the action taken as requested by the Assessment Sub-Committee.

Councillor M Hart joined the meeting at 18:08

Members debated the benefits of the Assessment Sub-Committee, in particular that the outcome was suitable for the actions demonstrated by the Councillor. However the Assessment Sub Committee Member did note that their recommendation for the offence should have been more prescriptive so that the required outcome was completed in the first instance and without prevarication.

**There being no further business the meeting ended at 18:30**

**WYRE FOREST DISTRICT COUNCIL**

**ETHICS AND STANDARDS COMMITTEE**

**The Localism Act 2011 – The Amended Standards Regime**

16<sup>th</sup> April 2012

<b>OPEN</b>	
<b>DIRECTOR:</b>	Monitoring Officer
<b>CONTACT OFFICER:</b>	Caroline Newlands, Ext. 2715
<b>APPENDICES</b>	

**1. PURPOSE OF REPORT**

- 1.1 The Localism Act 2011 substantially replaces the current Member Conduct regime. The commencement date for these provisions has been made and requires new procedures must be adopted before July 2012.
- 1.2 It is intended to bring these into force at Annual Council in May 2012.
- 1.3 This report describes the changes and recommends the actions required for the District Council to implement the new regime.

**2. RECOMMENDATION**

**The Committee is asked to;**

**Note the contents and feedback any comments to the Monitoring Officer.**

**Recommend the draft code to Council**

**3. BACKGROUND**

**Localism Act**

- 3.1 Through the Localism Act, the Government has abolished the Standards Board regime. Instead, local authorities will draw up their own codes, and it will become a criminal offence for councillors to deliberately withhold or misrepresent a financial interest. This means that councils will not have to spend time and money investigating trivial complaints, while councillors involved in corruption and misconduct will face appropriately serious sanctions. The Government believes that this will provide a more effective safeguard against unacceptable behaviour.
- 3.2 In order to implement the provisions in this report, the District Council will need to take a series of decisions and actions, including adopting "arrangements" as to how to deal with misconduct complaints under the new regime, to assist with that process this report proposes a draft set of "arrangements".

#### 4. KEY ISSUES

##### 4.1 **Duty to promote and maintain high standards of conduct.**

The authority will have a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

##### 4.2 STANDARDS COMMITTEE

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee, so, there will be no legal requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so we will need to constitute a Standards Committee which will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result of this;

- 4.3 The composition of the Committee will be governed by proportionality, unless the 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;
- 4.4 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 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 cannot be a Member of the Committee.
- 4.5 Existing Independent Members may be co-opted Members (non-voting) of the Committee.
- 4.6 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council Members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting Members of the Committee (which could then take operative decisions in respect of Members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

**Issue 1 – The District Council must decide whether to establish a Standards Committee, and how it is to be composed.**

##### **Recommendation 1 –**

- a. **That the District Council establish a Standards Committee comprising 7 elected Members of the District Council, appointed proportionally, no more than one of whom shall be a Member of the Executive;**

- b. **The existing Independent Members be invited to join as co-opted Members.**
- c. **That the Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting Members of the Committee;**

## **5 THE CODE OF CONDUCT**

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 District Council will be required to adopt a new Code of Conduct governing elected and co-opted Members conduct when acting in that capacity. The District 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

The District 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 provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the District Council might consider that it is appropriate to include in the Code. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

The Act prohibits Members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring Members to withdraw from the meeting room (e.g. any Member with a Disclosable Pecuniary Interest in a committee item must withdraw from the meeting room during the consideration of that item).

So the District Council's 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.

**Issue 2 – The District Council has to decide what it will include in its Code of Conduct**



## Recommendation 2 -

- a. That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –
  - i. equate to Paragraphs 3 to 7 of the current Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the District Council or its Committees and Sub-Committees; and
  - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Committee, add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs.

## 6 DEALING WITH MISCONDUCT COMPLAINTS

### 6.1 "Arrangements"

The Act requires that the District Council adopt "arrangements" for dealing with complaints of breach of Code of Conduct both by District Council Members and by 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.

The advantage is that the Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees, and enables the District 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 the District Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

### 6.2 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to 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 the Monitoring Officer feels that it would be inappropriate for her to take a decision. For example where she 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.

### 6.3 “No Breach of Code” finding on investigation

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 Referrals 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 Standards Committee if she feels appropriate.

### 6.4 “Breach of Code” finding on investigation

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 summary report for information to the Standards Committee.

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 (in practice a Hearings Panel constituted as a Sub-Committee of 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 Hearing 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.

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

The Act does not give the District Council or its Standards Committee any powers to impose sanctions on Members, such as suspension or requirements for training or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the Member concerned. In practice, this might include the following –

6.5.1 Reporting its findings to the District Council (*or to the Parish Council*) for information;

6.5.2 Recommending to the Group Leader and/or the District Council (or in the case of un-grouped Members, recommend to the District Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the District Council;

6.5.3 Recommending to the Leader of the Council that the Member be removed from the Cabinet.

6.5.4 Instructing the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the Member;

- 6.5.5 Recommending to the District 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 Parish Council*);
- 6.5.6 Instruct the proper officer to withdraw (*or recommend to the Parish Council that it withdraws*) facilities provided to the Member by the District Council, such as a computer, website and/or email and Internet access; or
- 6.5.7 Suspend allowances for a periods of up to 6 months pursuant to the members scheme of allowances adopted by the Council
- 6.5.7 Excluding (*or recommend that the Parish Council exclude*) the Member from the District Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the Member. 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 Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Parish Council.

## 6.6 **APPEALS**

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.

**Issue 3 – The District Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct.**

**Recommendation 3A – That the Monitoring Officer be instructed to prepare and submit to the District Council for approval “arrangements” as follows -**

- a. **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**
- b. **That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Standards Committee where she feels that it is inappropriate for her to take the decision, and to report annually to Standards Committee on the discharge of this function;**

- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, the Monitoring Officer is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- e. That the District Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
- Reporting its findings to the District Council (*or to the Parish Council*) for information;
  - Recommending to the Member's Group Leader and/or District Council (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the District Council;
  - Recommending to the Leader of the Council that the Member be removed from the Cabinet.
  - Instruct the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the Member;
  - Recommending to the District Council that a Member be removed (*or recommend to the Parish Council that the Member be remove*) from all outside appointments to which he/she has been appointed or nominated by the authority (*or by the Parish Council*);
  - Instruct the proper officer to withdraw (*or recommend to the Parish Council that it withdraw*) facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
  - Excluding (*or recommend that the 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.

**Suspending allowances for a period of up to 6 months in  
accordance with the members Scheme of Allowances adopted by  
Council On 29<sup>th</sup> February 2012**

**Recommendation 3b – that the Monitoring Officer in consultation with the Chair of the Standards Committee develop proposals as to how the new system could operate.**

**7 INDEPENDENT PERSON(S)**

The “arrangements” adopted by the District Council must include provision for the appointment by Council of at least one Independent Person.

**7.1 “Independence”**

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 District Council (not just of those present and voting).

A person is considered not to be “independent” if –

7.1.1 he is, or has been within the last 5 years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area;

7.1.2 he is, or has been within the last 5 years, an elected or co-opted Member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent Members of Standards Committee from being appointed as an Independent Person); or

7.1.3 he is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted Member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- 7.1.3.1 the candidate’s spouse or civil partner;
- 7.1.3.2 any person with whom the candidate is living as if they are spouses or civil partners;
- 7.1.3.3 the candidate’s grandparent;
- 7.1.3.4 any person who is a lineal descendent of the candidate’s grandparent;
- 7.1.3.5 a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- 7.1.3.6 the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
- 7.1.3.7 any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

**7.2 Functions of the Independent Person**

The functions of the Independent Person(s) are –

- They must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of

breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);

- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a Member or co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint. There may be scope for the Independent Member to fulfil the intended role by carrying out the investigations and reporting to the Monitoring Officer or Hearings committee. This would be dependent on the Independent Member having no earlier involvement in advising a Member .

### 7.3 How many Independent Persons?

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 reserve candidate is appointed 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.

### 7.4 Remuneration

As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person does not come within the scheme of Members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal Member of the Committee or Panel (he/she could be co-opted as a non-voting Member but cannot chair as the Chair must exercise a second or casting vote). He/she will need to be available to be consulted by Members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before deciding whether to include remuneration. It is an option for existing allowances for independent Members to be paid to the new independent Member. This is an area where the legislation has inadvertently created a conflict relating to the role of the Independent Member.

## **Issue 4 – How many Independent Persons are required?**

### **Recommendation 4 –**

- a. **That the Monitoring Officer be authorised to set any allowances and/or expenses and advertise for Independent Persons as required.**

## **8 THE REGISTER OF MEMBERS' INTERESTS**

### **8.1 The register of Members' interests**

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

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.

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.

The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

### **8.2 Registration on election or co-option**

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.

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.

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.

The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

## Issue 5 – Preparation of the Registers

### Recommendation 5 –

- a. That the Monitoring Officer prepare and maintain a new register of Members' interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
- b. That the Monitoring Officer ensures that all Members are informed of their duty to register interests;
- c. That the Monitoring Officer prepare and maintain new registers of Members' interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and
- d. That the Monitoring Officer arrange to inform and train Parish Clerks on the new registration arrangements.

## 9 DISCLOSURE OF INTERESTS AND WITHDRAWAL FROM MEETINGS

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences:

- 9.1 The duty to disclose and withdraw arises whenever a Member attends any meeting of the District 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.
- 9.2 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 will no longer be disclosed at the meeting.
- 9.3 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.
- 9.4 If a Member has a DPI in any matter, he/she must not –
- 9.5 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
- 9.5.1 Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.



- 9.6 Failure to comply with the requirements (paragraphs 9.2, 9.3 or 9.4) becomes a criminal offence, rather than leading to sanctions;
- 9.7 The District 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 Code of Conduct but not a criminal offence.
- 9.8 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, 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.

**Issue 6 – What Standing Order should the District Council adopt in respect of withdrawal from meetings for interests?**

**Recommendation 6 – The Monitoring Officer be instructed to recommend to the District Council a Standing Order which equates to the current Code of conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.**

**10 DISCLOSURE AND WITHDRAWAL IN RESPECT OF MATTERS TO BE DETERMINED BY A SINGLE MEMBER**

- 10.1 Matters can be decided by a single Member acting alone where the Member is a Cabinet Member acting under Portfolio powers.
- 10.2 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 –
  - 10.2.1 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
  - 10.2.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.
- 10.3 Standing Orders can then provide for the exclusion of the Member from any meeting while any discussion or vote takes place on the matter.
- 10.4 Note that the Act here 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

**The Leader can delegate to another Cabinet Member or Officer and Recommendation 6 restrictions will apply.**

**11 SENSITIVE INTERESTS**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

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".

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.

## **12 DISPENSATIONS**

12.1 The provisions on dispensations are significantly changed by the Localism Act.

12.2 At present, a Member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –

12.2.1 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 Standards Committee); and

12.2.2 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).

12.3 In future, a dispensation will be able to be granted in the following circumstances –

12.3.1 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;

12.3.2 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;

12.3.3 That the authority considers that the dispensation is in the interests of persons living in the authority's area;

12.3.4 That, without dispensation, no member of the Cabinet would be able to participate on 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) so long as he/she is one who hasn't an interest, the Leader can delegate to that Member or Chief Executive.

12.3.5 That the authority considers that it is otherwise appropriate to grant a dispensation.

12.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

12.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee. Grounds 12.3.1 and 12.3.4 are quite objective, with an appeal to the Standards Committee, thus enabling dispensations to be granted "at the door of the meeting". Grounds 12.3.2, 12.3.3 and 12.2.5 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

#### **Issue 8 – What arrangements would be appropriate for granting dispensations?**

**Recommendation 8 – That the District Council make appropriate provision in the Code of Conduct to delegate the granting of appropriate dispensations**

### **13 TRANSITIONAL ARRANGEMENTS**

Regulations under the Localism Act cover –

- 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.
- 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.

### **14 FINANCIAL IMPLICATIONS**

14.1 The Council is required to make resources available to the Monitoring Officer. The new provisions have the potential to impose additional burdens and investigations on the Monitoring Officer which could require responsive future funding requirements.

### **15. LEGAL AND POLICY IMPLICATIONS**

15.1 The statutory framework governing standards remains operative until such time as any new relevant legislation is passed.

### **16. EQUALITY IMPACT NEEDS ASSESSMENT**

16.1 This report was screened for impact on equalities. As a result of this screening it has been decided that a full equality impact assessment is not required.

**17. RISK MANAGEMENT**

17.1 It is necessary to ensure that until alternative arrangements are in place that the statutory framework for standards is adhered to.

**18. CONSULTEES**

18.1 Chairman of Ethics and Standards Committee

**19. BACKGROUND PAPERS**

19.1 Localism Act 2011