

BRECKLAND DISTRICT COUNCIL

Report of Monitoring Officer

To: Standards Committee – 3rd January, 2012

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Subject: The Localism Act 2011 – The Amended Standards Regime

Purpose: This report describes the changes and recommends the actions required for the Council to implement the new regime under the Localism Act 2011 which makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.

Recommendations:

- 1) The Committee is asked to request the Monitoring Officer to draft a suggested Code or Codes in accordance with their views for the next meeting of this Committee to consider.**
- 2) The Committee is asked to make a recommendation as to whether there should be a Standards Committee, and how it is to be composed.**
- 3) Members' views are requested on how the existing procedures can be improved, and it is suggested that the Monitoring Officer is asked to prepare draft procedures for the next Committee meeting.**
- 4) a. That a recommendation be made to Council on the initial allowances and expenses for the Independent Person(s)**
b. That the Monitoring Officer advertise a vacancy of the appointment of 2 Independent Persons
c. That applications be put to this Committee for a recommendation to full Council on the persons to be appointed.
- 5) A Standing Order be drafted 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.**

1. INTRODUCTION

1.1 Background

The Localism Act 2011

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1st April 2012, but may yet be effective from the Annual Meeting of Council in May 2012.

This report describes the changes and recommends the actions required for the Council to implement the new regime.

Duty to promote and maintain high standards of conduct

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

1.2 Issues

1.2.1 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The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct.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 Council will be required to adopt a new Code of Conduct governing elected and co-opted member's 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

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 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 Council might consider to be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. 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.

So the 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. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; 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.

The Council has to decide what it will include in its Code of Conduct. The Committee's views are requested on:

- a. whether the Code could be based on the existing Code (paras. 1 & 2 amended, paras. 3 to 7, possibly), plus registration and declaration new provisions;
- b. on any other model Codes coming forward from Norfolk County Council, ACSes, NALC, LGA, etc. – these will be attached, if possible.

The Committee is asked to request the Monitoring Officer to draft a suggested Code or Codes in accordance with their views on the above for the next meeting of this Committee to consider.

1.2.2 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 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. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

The composition of the Committee will be governed by political balance requirements, 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.

The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee. There is at present a legal argument as to whether the existing Independent Members can be appointed as the Independent Person or not.

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). There are further possibilities of Joint Committees with South Holland or Norfolk authorities.

The Committee is asked to make a recommendation as to whether there should be a Standards Committee, and how it is to be composed.

1.2.3 Dealing with Misconduct Complaints

“Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of breaches of the 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 Assessment, Review and Hearings 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.

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.

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.

Members’ views are requested on how the existing procedures can be improved, and it is suggested that the Monitoring Officer is asked to prepare draft procedures for the next Committee meeting.

1.2.4 Independent Person(s)

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

“Independents”

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 –

1.2.4.1 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;

1.2.4.2 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

1.2.4.3 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 –

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

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.
- They may be consulted by the authority in respect of a standards complaint at any other stage.
- 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.

How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons. Two may be a reasonable number for practicable purposes.

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 no longer comes 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. The Independent Person could also be involved in the local resolution of complaints. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

Question - How many Independent Persons are required?

Recommendation –

- a. That a recommendation be made to Council on the initial allowances and expenses for the Independent Person(s)**
- b. That the Monitoring Officer advertise a vacancy of the appointment of 2 Independent Persons**
- c. That applications be put to this Committee for a recommendation to full Council on the persons to be appointed.**

1.2.5 Disclosure of Interests and Withdrawal from Meetings

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

1.2.5.1 The duty to disclose 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.

1.2.5.2 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 have to be disclosed at the meeting under the Act itself.

1.2.5.3 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.

1.2.5.3 If a member has a DPI in any matter, he/she must not –

1.2.5.3.1 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)(public speaking) of the model Code of Conduct; or

1.2.5.3.2 participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

Failure to comply with the requirements becomes a criminal offence, rather than leading to sanctions.

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 Code of Conduct but not a criminal offence.

The requirement to withdraw from the meeting room can be covered by Standing Orders, which could apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings, but a 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.

Question - What Standing Order should the Council be recommended to adopt in respect of withdrawal from meetings for interests?

Recommendation –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.

1.2.6 Disclosure and Withdrawal in respect of matters to be determined by a Single Member

Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers.

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 –

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

He/she must take no action in respect of that matter other than to refer it to another person or body to take the decision.

The Constitution at present prevents an Executive member from exercising his power where he has a prejudicial interest. This will need amendment to relate to DPIs. Standing Orders can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.

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

Question – Is the Committee happy with the above?

1.2.7 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 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.

A report on the Register will be made to a future meeting of the Committee.

1.2.8 Dispensations

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

It is recommended that a report on this subject is made to a future meeting of the Committee

1.2.9 Transitional Arrangements

Regulations under the Localism 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.

1.2.10 Training

The instructions of the Committee are requested on what training the Monitoring Officer should provide for district and town/parish councillors.

2. IMPLICATIONS

2.1 Risk

2.2 Financial

None

2.3 Legal

There may need to be changes to the Constitution in respect of the composition of Standards Committee and a new Standing Order.

2.4 Equality and Diversity

None

3. Alignment to Council Priorities

3.1 Your Council, Your Services

4. Wards/Communities Affected

4.1 All

Background papers:-

1. This Report draws heavily on a model report drafted by Bevan Brittan, Solicitors.

2. Key Dates:

Cabinet: 10 Jan/ 14 Feb/ 27 Mar/ 8 May

Council: 19 Jan/ 23 Feb/ 12 April/ 24 May (AM)

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