

Hampshire Fire and Rescue Authority

Standards and Governance Committee

Item 7

28 June 2012

Localism Act 2011– Implementation of Changes to the Standards Regime

Report of the Clerk

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1 Summary

- 1.1 Previously a report has been presented to the former Standards Committee in respect of the implications of the Localism Act 2011 for standards. At its meeting on 15 December 2011, it discussed the provisions in the Act amending the arrangements governing standards of Member conduct, and identified some of the options available to the full Authority in terms of the successor arrangements for standards. These options for successor arrangements were then considered by the Corporate Management Team on 10 January 2012 and 24 May 2012.
- 1.2 At the meeting of the full Authority on 6 June 2012 the Authority discussed the proposed options for the successor arrangements and recommended the new Standards and Governance Committee review the arrangements for handling allegations of failure to comply with the Member Code of Conduct, with final approval of those arrangements by the Authority. The Authority also recommended the new Standards and Governance Committee to oversee the process of recruitment of an Independent Person, including the ability to establish a selection panel from amongst its members to interview candidates and recommend to the Authority for appointment. The Authority also asked the Committee to review the position with regard to disclosure of pecuniary interests once the relevant Regulations had been published. This report addresses these recommendations matters.

2 Recommendations

- 2.1 That the “Arrangements” for handling allegations of failure to comply with the Code of Conduct, set out in the Schedule to the report, be agreed and recommended to the Authority for approval and adoption.
- 2.2 That the approval and adoption of the “Arrangements” be publicised via the Authority’s website.

- 2.3 That applications for independent person be sought via the Authority's website, and the selection criteria in Paragraph 6.5 be agreed.
- 2.4 A Selection Panel comprising the Chairman and three other members of the Standards and Governance Committee be set up to short-list and interview candidates and to make recommendations to the Authority for appointment.
- 2.5 That consideration is given to the payment of an allowance to the independent person.
- 2.6 That consideration is given as to whether the Authority's Code of Conduct should require the disclosure of any pecuniary or other interests other than those required by law, and the Authority advised accordingly.

3 Background

- 3.1 As Members will be aware, the Localism Act 2011 repealed the existing statutory provisions contained with Local Government Act 2000 and the Standards Committees (England) Regulations 2008, which specified how authorities in England must deal with allegations of breach of their code of conduct. From 1st July all standards matters will be handled under "new arrangements".

4 The Localism Act 2011

- 4.1 The Localism Act requires that Fire and Rescue Authorities ("FRAs") must have in place "arrangements" under which allegations that a Member may have breached the Code of Conduct can be investigated and under which, decisions on allegations can be made. The Act does not prescribe the detail of what those arrangements should be for investigating allegations nor for reaching decisions on allegations, save for the requirement that the arrangements must include the involvement of an "independent person" as referred to below. The Act leaves it open to FRAs to adopt a voluntary standards committee or some other approach. FRAs must deal with complaints of a breach of the Code by considering whether an individual complaint merits investigation, and if so, it must investigate the allegation. If the FRAs find that there has been a breach, it must then decide whether and what action to take.
- 4.2 The Act repeals the requirements for separate Sub-Committees to deal with assessment, review, consideration and hearings of complaints. The Act also repeals the provisions requiring at least 25% of the Standards Committee to be independent persons including the Chairman and that those independent persons have voting rights.

- 4.3 In addition the Act specifies that “arrangements’ adopted by FRAs must include provision for the appointment of an “independent person” whose view must be sought before reaching a decision on an allegation. Further information on this role is given in section 6 below.

5. Handling of Complaints – “Arrangements”

- 5.1 The former Standards Committee noted that the existing procedures for handling of complaints against members were fair and thorough, but had not yet been tested due to an absence of actual complaints to consider. Members had also been trained in how to operate those procedures. It was felt therefore that investment of time and resource in devising a completely different set of arrangements could not be justified. Further, the Authority is pursuing discussions through Hampshire and Isle of Wight Local Authorities (HLOWLA) with a view to the possibility of collaboration in complaints handling for the longer term. The new Standards and Governance Committee proposes therefore that, in principle these procedures should be retained and adopted as its “Arrangements”, subject to the modifications shown highlighted as attached in the Schedule to the report, to comply with changes in the Act. The “Arrangements” can be revised further by the members of the Standards and Governance Committee, if considered necessary at a later date, subject to the approval by the Authority.
- 5.2 In particular, Members will note at paragraph 17 of the “Arrangements” that the ‘sanctions’ have been modified. The Act removes the previous array of sanctions and does not give the Authority any powers to impose sanctions such as suspension or requirements for training. So, where a failure to comply with the Code of Conduct is found, the range of sanctions which the Authority can now take in respect of the Member is limited to censure and such other actions which are permitted under general local government law.
- 5.3 The following sanctions are lawfully available subject of course to the particular facts and circumstances and a lawful and proportionate manner of application:-
- Reporting its findings to the Authority (and/or the Member’s appointing authority) for information;
 - Recommending to the Member’s Group Leader that he/she be removed from any or all committees of the Authority subject to statutory and constitutional requirements;
 - Formal letter from the Authority or one of its committees to a Member;
 - Formal censure through a motion
- 5.5 Members will also note the ‘Right of Appeal’ has been removed from the “Arrangements”. There is no requirement under the Act to put in place any appeals mechanism against a decision of failure to comply with the Code of

Conduct. 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.

6 Involvement of Independent Person

6.1 As indicated above, the Act requires that the Authority appoint at least one 'Independent Person' whose views are to be sought, and taken into account, before making a decision on an allegation being investigated. There are certain restrictions on who may be appointed, and there must be an advertised recruitment process, with the appointment approved by a majority of Members. It is proposed that applications be sought via an advertisement on the Authority's website.

6.2 It is recommended the Standards and Governance Committee establish a Selection Panel from amongst its members to interview candidates and make a recommendation to the Authority for appointment. This would include flexibility to jointly recruit to a pool of two or three independent persons to be shared with other authorities, should the current HIOWLA discussions lead to collaboration. Whatever the outcome of the discussions there will need to be a process for interviewing candidates in order to formulate recommendations to the Authority.

6.3 A person is considered not to be "independent" if –

- he/she is, or has been within the last 5 years, an elected or co-opted member or an officer of the Authority (although the co-opted independent members of the former Standards Committee would be eligible for appointment if they resign their position before 1 July 2012, and they are appointed as independent person before 1 July 2013); or
- he/she is a relative or close friend of a current elected or co-opted member or officer of the Authority.

6.4 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; and
- They may be consulted by a Member or co-opted member of the Authority against whom a complaint has been made.

6.5 It is proposed that the selection criteria for candidates should be as follows:

- Good understanding of the principles of standards in public life

- Practical experience of interpreting and applying codes of ethical standards
- Knowledge of the statutory framework within which the role of independent person operates
- Holds an interest in the work of the Authority
- Demonstrates objectivity and impartiality
- Ability to earn and retain the confidence of Members, the public and other stake holders

6.6 The Act gives discretion to appoint one or more Independent Persons. To cater for the possible situation where the appointed independent person is unavailable, it may be prudent to appoint at least two.

6.7 It is permissible to pay an allowance and/or expenses to the person appointed, subject to the approval of the Authority. An option is to pay an allowance at the level previously available to an independent member of Standards Committee (£666 per annum). Members' views on this are invited.

7. Disclosure of Interests

7.1 When the Authority considered a report on the new Code of Conduct and related matters on 6 June 2012, the Government had still not published the necessary regulations defining interests that must be disclosed, known as disclosable pecuniary interests. While it is possible to include in a Code of Conduct a requirement that additional pecuniary and other interests be disclosed, the absence of the regulations made it difficult to judge whether this was required.

7.2 The Authority therefore decided not to make any provision at that stage for interests other than disclosable pecuniary interests to be disclosed. The Authority asked for this situation to be reviewed by the Standards and Governance Committee when the Regulations became available, and for the Authority to be advised as to whether any change to this position is appropriate.

7.3 The Government has now published the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The pecuniary interests which must be disclosed by Members from 1 July 2012 are set out in Part 3 of the Code of Conduct, in the Schedule to the report. The main changes from the requirements on disclosure of personal interests under the current Code of Conduct are that it is no longer necessary to disclose:

- Membership of other local authorities, public or charitable bodies and lobby groups
- Receipt of gift or hospitality with an estimated value of at least £25

The Committee is asked to consider and advise the Authority as to whether there are any other interests, in addition to those set out in Part 3 of the Code of Conduct, that Members should be required to disclose.

8 Conclusion

- 8.1 The report sets out the new “Arrangements” for handling allegations of failure to comply with the Member Code of Conduct, together with the proposed recruitment process of an Independent Person(s). The report also outlines those categories of pecuniary interest which are disclosable from 1 July so that consideration can be given as to whether any further requirements should be included.

9 Equality Impact Assessment

- 9.1 The proposed modified “Arrangements”, Complaint Form and the recruitment process for the appointment of the ‘Independent Person(s)’ complies with equalities legislation.

Section 100D – Local Government Act 1972 – background papers

The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of this report.

N.B. The list excludes:

Published works.

Documents that disclose exempt or confidential information as defined in the Act.

TITLE

FILE

None.