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| Hampshire Fire and Rescue Authority | Item |
| Standards Committee | |
| 16th December 2011 | |
| Localism Act 2011– Changes to the Standards Regime | |
| Report of the Clerk | |

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1 Summary

- 1.1 At its meeting on 16 June this year, the Authority received information on the progress of the Localism Bill and the existing provisions in legislation governing ethical standards which would apply should the current standards regime be abolished. On 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act ("the Act"). Chapter 7 of the Act contains provisions amending the existing standards regime. This report informs members of the implications of the Act relating to Hampshire Fire and Rescue Authority's ("HFRA") Code of Conduct for members and identifies some of the options for HFRA's future arrangements for standards. Following consideration by the Standards Committee, the Clerk will be reporting on the options available for future arrangements to the Authority's Corporate Management Team in January 2012. This will enable a decision to be made on the matter by the full Authority in February 2012.

2 Recommendations

- 2.1 That the Committee:-
- a) notes the changes to the standards regime brought about by the Localism Act 2011;
 - b) considers the options for future arrangements as set out in section 6 of this Report; and
 - c) advises the Clerk as to the options and proposals to be referred the Authority's Corporate Management Team in January 2012.

3. Background

- 3.1 The present national standards regime came into being in 2000, as part of the Local Government Act 2000, and was subsequently amended by the Local Government and Public Involvement in Health Act 2007. The 2000 Act established a National Model Code of Conduct, Local Standards Committees and a Standards Board for England (subsequently retitled "Standards for England") as the statutory regulator. The Model Code of Conduct set out expected national standards of behaviour for elected and co-opted members. Standards Committees were established to assist local authorities in maintaining good standards whilst the Standards Board for England was established to provide an over-arching framework for standards of conduct and to monitor and investigate complaints. Amendments introduced in May 2008 led to the determination of complaints against members being delegated to Local Standard Committees in all but the most serious cases.

4. The Localism Act 2011

- 4.1 The Act abolishes the current standards regime governing the conduct of members. As a result, the Standards Board for England, the requirement for authorities to have Standards Committees and the National Model Code of Conduct are abolished from a date to be appointed. In the meantime the existing Code of Conduct and arrangements for complaints will continue to apply. The implementation date is likely to be April 2012. It is anticipated that there will be further regulations and guidance issued by the Government, which may influence the options available in establishing successor arrangements. The assessment of options available in this report is subject to compliance with any such requirements.
- 4.2 **Code of Conduct** - The Act provides that FRAs have a duty to promote and maintain high standards of conduct by members and co-opted members. FRAs must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the HFRA when they are acting in that capacity which must be consistent with the Seven Principles of Public Life enunciated by the Nolan Committee:- selflessness, integrity, objectivity, openness, accountability, honesty and leadership. The Code to be adopted can be a revision of the existing code or a totally new Code.
- 4.3 **Register of Interests** - The Register of Interests must remain and shall include the registration of pecuniary interests (to be defined further in regulations). The Code of Conduct must include the provision HFRA considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests and non-pecuniary interests. The Register must be available for inspection and be published on the FRAs website. The registration of discloseable pecuniary interests must be

made within 28 days of taking office. Those interests to be declared are those of the member and their partner.

- 4.4 The Act imposes a criminal offence for the non disclosure of a pecuniary interest, for participating in any discussion or vote on the matter in which the member/co-opted member has a pecuniary interest or for taking any steps in relation to the matter to be considered, without reasonable excuse. The Act makes it a criminal offence to provide knowingly or recklessly false or misleading information in relation to the disclosure of a pecuniary interest. A person found guilty could be fined up to £5000 and disqualified for up to five years from being a councillor. The matter would be prosecuted by the Director of Public Prosecutions.
- 4.5 **Complaints** - In addition, FRAs must put in place a system to deal with allegations that members have breached the code. FRAs must also put in place arrangements for investigating allegations under the code of conduct and for making decisions regarding the allegations. The Act does not prescribe what those arrangements should be, but 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.
- 4.6 **Independent Person** - FRAs must also appoint an "independent person" whose view must be sought before reaching a decision on an allegation. The "independent person" cannot have been a member or co-opted member of the FRA in the previous five years. There are also other provisions regarding who may qualify as an independent person.
- 4.7 **Sanctions** - If a complaint is upheld, sanctions available might include, for a minor matter, a formal letter or other recording of the matter. Where there has been a more serious breach of the code, formal censure might be required. .

5. **Actions to be taken by HFRA**

- 5.1 To accord with the requirements of the Act the actions to be taken by HFRA are to:-
- a) review, adopt, revise or replace its Code of Conduct;
 - b) review and amend the process for dealing with and investigating complaints against members including the sanctions available against members when they are found to be in breach of the Code;
 - c) consider whether or not it wants to retain a Standards Committee with independent members to fulfil its duty to promote high standards of conduct and to administer complaints made under the Code of Conduct;

- d) put in place the arrangements for involvement of an Independent Person; and
- e) review meeting procedures to deal with the involvement of members when they have a pecuniary interest and publish those interests.

6. Options for Future Arrangements of Standards for HFRA

- 6.1 The present Standards regime is to be abolished most likely from April 2012. HFRA will need to start to consider therefore, how it will implement the Act from April 2012 and how it will manage the abolition of the present regime. Members must also give consideration to factors such as the Code of Conduct, the position of the Standards Committee, handling complaints and the appointment of an Independent Person, as set out below.

6.1.1 Code of Conduct

Only the Authority may adopt, revise, or replace its code of conduct as this function cannot be delegated. HFRA is required to publicise the adoption, revision or replacement of a Code of Conduct. How HFRA deals with complaints is a matter for HFRA. The options in respect of the Code of Conduct are:-

- a) adopting substantially the same code of conduct (having been reviewed and amended in line with the provisions of the Act and reflecting HFRA's position on register able interests);
- b) adopting a light-touch code of conduct based on the Nolan Principles together with the inclusion of a statement of values and reflecting HFRA's position on register able interests.
- c) adopting a Code in the same or similar terms to that adopted by neighbouring authorities.

6.1.2 Standards Committee

As already indicated the Authority is not required to maintain a standards committee. Therefore options to be considered are as follows:-

- a) the retention of HFRA's existing Standards Committee to comply with its obligations under the Act to promote and maintain high standards of conduct and to be the vehicle for complying with the requirement to have arrangements in place to deal with and investigate allegations that members have breached the code of conduct. Members would have to decide whether or not the

Standards Committee would still have an independent chairman and independent members.

b) the abolition of HFRA's Standards Committee but another existing committee e.g. Governance Committee, to have the responsibility to promote standards and deal with and investigate complaints. To enable the Governance Committee to deal with standards, the terms of reference for this Committee would have to be formally amended to include provision for dealing with and investigating complaints, which could be through the establishment of a Panel. The Panel could include the independent person.

The committee given the responsibility as above could also deal with dispensations for members participating in HFRA business with a pecuniary interest.

6.1.3 Arrangements for Investigating Complaints

HFRA will need to have in place arrangements for investigating complaints under the Code of Conduct and for making decisions regarding the allegations. HFRA's current procedures for assessing, investigating and dealing with complaints that members have breached the Code of Conduct must be reviewed. A fundamental question is as to how complex or prescriptive these arrangements should be. Issues to be reviewed include:-

- a) the formal stages of complaint assessment;
- b) the amount of information divulged to members;
- c) options on initial assessment- should 'other action' be retained;
- d) the sanctions available where a breach of the Code has been found; and
- e) how to make provision for the involvement of the Independent Person

When considering the matter on of 16 June 2011, Committee members put forward an idea to explore with the Local Government Ombudsman's Office a possible arrangement whereby a locally appointed independent member was empowered by that Office to act on their behalf on investigating a complaint involving a Member of either the HFRA/ Hampshire Police Authority or HCC.

6.1.4 Procedure for the Appointment of an Independent Person

HFRA will need to:-

- a) agree the role to be played by the Independent Person;

- b) make arrangements for recruiting and appointing an Independent Person; and
- c) decide the position on allowances for the Independent Person

7. Conclusion

- 7.1 The report outlines the implications of the Localism Act 2011 for HFRA in respect of the Standards regime. Members are asked to consider and explore the options as set out in this report. Comments made as to the options available will then be reflected in a report that the Clerk will prepare for the Authority's Corporate Management Team in January 2012. It is intended that following CMT's deliberations, a report on proposed successor arrangements will be brought to the full Authority meeting in February 2012 for decision.

8 Equality Impact Assessment

- 8.1 Any adopted, revised or replacement code of conduct will take into account the role of members in relation to 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.