

## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee/Panel:</b>	Standards Committee
<b>Date:</b>	2 March 2012
<b>Title:</b>	Localism Act 2011-Standards update
<b>Reference:</b>	3757
<b>Report From:</b>	Chief Executive

**Contact name:** Barbara Beardwell

**Tel:** 01962-845157

**Email:** Barbara.beardwell@hants.gov.uk

### 1. Summary

The Localism Act 2011 received Royal Assent on 15 November 2011. The Act makes fundamental changes to the regulation of standards of conduct in Local Authorities.

#### Key provisions

- 1.1 The County Council will remain under a duty to promote and maintain high standards of conduct by members and co-opted members of the County Council.
- 1.2 On the appointed day (expected to be 1 July 2012) the County Council's existing Member's Code of Conduct will cease to have effect and Members will be released from the undertakings they gave to abide by it. The statutory provisions that required members to undertake to comply the County Council's Code of Conduct will also be repealed.
- 1.3 Notwithstanding earlier indications the County Council will still be required to have a Members Code of Conduct which is consistent with the following principles:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership

- 1.4 The Member's Code of Conduct must include provisions in respect of the registration and disclosure of Pecuniary Interests (to be defined in a statutory instrument) and any other interests that the County Council decides should be registered. The register of interest must be maintained by the Monitoring Officer and made available for inspection at County Council offices and on the County Council's web site.
- 1.5 Members will be prohibited from participating in County Council business when they have a Pecuniary Interest.
- 1.6 The County Council may revise its existing Member's Code of Conduct or adopt a new code to replace it.
- 1.7 The County Council will be required to have in place arrangements for investigating complaints that members have failed to comply with the Member's Code of Conduct and for making decisions about allegations.
- 1.8 These arrangements include the requirement to appoint an "Independent Person" who must be consulted by the County Council before action is taken on a complaint and who may be consulted by members who have been complained against. As drafted existing Independent Members will not be eligible for appointment as the Independent Person although it has recently been suggested that transitional provisions will allow former independent members to be appointed.
- 1.9 The statutory requirement to maintain a Standards Committee with independent members and an independent chairman will be repealed but the County Council can retain a Standards Committee if it chooses.
- 1.10 A new Criminal offence for non disclosure of Pecuniary Interests will be introduced.
- 1.11 All statutory sanctions under the previous regime have been repealed and no new sanctions, beyond the common law, are available to the County Council to deal with breaches of the Member's Code of Conduct

## **2. Standards Committee**

- 2.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no statutory requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work. It is therefore likely to remain appropriate to have a Committee to deal with standards issues. Such a committee would be a normal Committee of the County Council, without the unique features which were conferred by the previous legislation. As a result-

- 2.1.1 The composition of any such Committee would be governed by proportionality, unless the County Council votes otherwise with no member voting against.
- 2.1.2 The present restriction to only one member of the Executive on the Standards Committee would cease to apply and
- 2.1.3 The current co-opted independent members would cease to hold office.

## **Issues**

- Would the County Council want to retain a Standards Committee to comply with its obligation to promote and maintain high standards of conduct by members and co-opted members of the County Council and to be the vehicle for complying with the requirement to have arrangement in place to investigate and make decisions on complaints?
- If the Standards Committee is retained would the County Council still want it to have an independent chairman and independent members? (If so they would have the same rights as any other co-opted members of the County Council)
- If the Standards Committee is not retained which committee will have the responsibility for promoting standards and investigating and making decisions on complaints?
- Will a Standards Committee deal with dispensations for participating in County Council business with a pecuniary interest?
- If not a Standards Committee which committee will deal with dispensations?

## **3. Member's Code of Conduct**

- 3.1 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 County 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 County 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

- 3.2 The County 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 the County Council’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.
- 3.3 The Act prohibits members with a DPI from participating in authority business, and the County Council can adopt a Standing Order requiring members to withdraw from the meeting room.

### **Issues**

- Will the County Council revise its existing Member’s Code of Conduct (retaining the general provisions in Part 1) or will it want to adopt a completely new Member’s Code of Conduct?
- Will the County Council want the new register of interests to include all current Personal Interests in addition to the prescribed Pecuniary Interests?
- If not what interests (if any) would the County Council want registered above and beyond the statutory requirement to register DPI’s?
- What mechanism will be used to procure a commitment from member’s to abide by the Member’s Code of Conduct. For example will Standing Orders provide that members cannot take part in County Council business until they have undertaken to comply with the Members Code of Conduct?
- Will the County Council revise its Standing Orders to require members to withdraw from a meeting room when they have a DPI?

## **4. Arrangements for investigating and making decisions on complaints**

- 4.1 The Act requires that the County Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct by 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.
- 4.2 The advantage is that the Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees, and enables the County Council to establish its own process, which can include delegation of decisions on complaints.

- 4.3 These arrangements would offer the opportunity for the Monitoring Officer or the Assessment Sub Committee to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.
- 4.4 The Act does not give the County Council any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the County Council can take in respect of the member is limited and must be directed to securing the continuing ability of the County Council to continue to discharge its functions effectively, rather than “punishing” the member concerned. Potential sanctions are set out below
- 4.5 Potential sanctions include the committee performing standards functions
- Reporting its findings to the County Council for information;
  - Recommending to the County Council that the member be removed from any or all Committees or Sub-Committees of the County Council (this sanction would be subject to the rules on proportionality and would require the agreement of the leader of the relevant political group);
  - Recommending to the Leader of the County Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
  - Recommending to the County Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the County Council:
  - Writing a formal letter to the member found to have breached the Code
  - Issuing a press release or other publicity that a member has breached the Code.
- 4.6 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.

## Issues

- Should the County Council retain the existing basic structure for assessing, investigating and dealing with complaints that members have breached the Member's Code of Conduct or does the County Council wish to adopt a new more flexible structure?
- What sanctions would the County Council want to be able to impose when it has found that there has been a breach of the Member's Code of Conduct? e.g. Given that the statutory powers to suspend and disqualify members will be repealed would the County Council wish to adopt the local sanctions referred to above?

## 5. Independent Persons

- 5.1 The "arrangements" adopted by County Council must include provision for the appointment by the County Council of at least one Independent Person.
- 5.2 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 County Council (not just of those present and voting).

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

- he is, or has been within the last 5 years, an elected or co-opted member or an officer of the County Council;
  - he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the County Council (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person, although this may be changed by transitional provisions); or
  - he is a relative or close friend of a current elected or co-opted member or officer of the County Council, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.
- 5.3 The functions of the Independent Person(s) are –
    - They must be consulted by the County Council 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 County Council in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the County Council against whom a complaint has been made.

5.4 As the Independent Person will not be a member of the County Council or of its Committees or Sub-Committees, the remuneration of the Independent Person will not come within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

5.5 In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be similar. 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.

### **Issues**

- What process should be followed to appoint the Independent person?

## **6 Conclusion**

Members' views are sought on the various issues identified in the report to inform a subsequent report to the Cabinet and to the County Council in due course.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate): N/A	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate): N/A	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate): N/A	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u>	<u>Date</u>	
Localism Act	2011	

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

**IMPACT ASSESSMENTS:**

**1. Equalities Impact Assessment:**

N/A

**7 Impact on Crime and Disorder:**

N/A

**8 Climate Change:**

8.4.1 How does what is being proposed impact on our carbon footprint / energy consumption?

N/A

8.4.2 How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

N/A