

To: **Members of the Standards Committee**

Professor Steven Broomhead
Interim Chief Executive

**Councillors S Bland, C Fitzsimmons,
B Maher, T McCarthy and J Walker**

17 July 2012

Standards Committee

Wednesday, 25 July 2012 at 6.30pm

Council Chamber, Town Hall, Warrington

Agenda prepared by Louise Murtagh, Democratic Services Officer –
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AGENDA

Part 1

Items open to members of the public (including the press) subject to any statutory right of exclusion.

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Number |
|--|------------------------|
| 1. <u>Appointment of Chairman</u> | |
| To appoint a Chairman | |
| 2. <u>Apologies for Absence</u> | |
| To record any apologies for absence received | |
| 3. <u>Code of Conduct – Declaration of Interests</u> | |
| Members are reminded of their responsibility to declare any personal or prejudicial interest they have in any item of business on the agenda no later than when the item is reached. | |
| 4. <u>Minutes</u> | 1 |
| To confirm the Minutes of the meeting of the Committee held on 27 February 2012 as a correct record. | |

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

Report of Solicitor to the Council

To
Follow

Part 2

Items of a “confidential or other special nature” during which it is likely that the meeting will not be open to the public and press as there would be a disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.

Nil

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STANDARDS COMMITTEE

27 FEBRUARY 2012

Present: Mr A Mackie (Independent Chair)

Independent Members – M Organ and W Ravenscroft
Councillors – S Bland, C Fitzsimmons, B Maher,
T McCarthy and J Walker
Parish Councillors – M Banner and G Warburton

ST17 Apologies for Absence

Apologies for absence were received from Mr M Organ and Parish Councillors V Allen and M Banner.

ST18 Code of Conduct

Councillors S Bland, C Fitzsimmons, B Maher and T McCarthy declared personal and prejudicial interests in minute ST20. As Parish Councillors they had requested a dispensation and could not take part in the vote relating to their own requests.

ST19 Minutes

The Minutes of the meeting held on 10 November 2011 were agreed as a correct record and signed by the Chair.

ST20 Granting of Dispensations to Councillors

The Committee considered the report of the Solicitor to the Council and the Assistant Director Governance which provided committee members with information relating to the Review of Charges for Parish Council Elections that was to be considered at the Council meeting of 5 March 2012.

The Local Authorities (Model Code of Conduct) Order 2007 required that any Council member with a "prejudicial interest" in any business of the Council must withdraw from the room or chamber where a meeting considering the business is being held. It would be undoubtedly the case that those Borough Councillors who were also parish councillors had a prejudicial interest in the subject matter of the report in question. However, the Order enabled the Standards Committee to grant those members with a prejudicial interest a dispensation to participate and vote upon any matter where such an interest exists.

The Council's records showed that as many as 40 of the Borough's 57 Councillors were also members of individual Parish Councils within Warrington. The quorum for consideration of matters at Council meetings was 19. It would not be possible for the Council to consider this matter if more than 38 of its Councillors were unable to participate in consideration of the item.

Councillors had been had aware of this issue by letter on 14 February 2012 and had been asked to forward their written requests for dispensation to the Solicitor to the Council and the Assistant Director Governance before 12.00 noon on 23 February 2012. A list of Councillors who had made such requests was tabled at the Committee.

Councillors S Bland, C Fitzsimmons, B Maher and T McCarthy left the meeting prior to the vote being held in relation to their own dispensation requests.

Decision – That the Committee granted dispensations to the Borough Councillors as listed below in respect of the Review of Charges for Parish Council Elections item being considered at the full Council meeting of 12 December 2011:

1	Axcell	13	Fitzsimmons	25	McCarthy
2	Biggin	14	Friend	26	Nelson
3	Bland (Keith)	15	Froggatt	27	O'Neill
4	Bland (Sue)	16	Gleave	28	Reynolds
5	Bowden	17	Higgins	29	Smith
6	Bretherton	18	Hoyle	30	Walker (Peter)
7	Brinksman	19	Johnson	31	Welborn (Elaine)
8	Bradshaw	20	Jordan	32	Wood
9	Campbell	21	Joyce	33	Woodyatt
10	Davidson	22	Keane	34	Wright (Pat)
11	Dirir	23	Maher		
12	Earl	24	Marks		

ST21 Future of Standards – Code of Conduct

The Committee received a verbal report from the Solicitor to the Council and the Assistant Director Governance regarding the Localism Bill and the implementation timetable for the changes under the bill.

Concerns had been raised by the Association of Council Secretaries and Solicitors (ACSeS) regarding the proposed 1 April 2012 implementation date of the new Standards Regime.

The Department for Communities and Local Government confirmed that Standards for England (SfE) ceased its regulatory functions on 31 January 2012 and would be abolished on 31 March 2012. Any cases being dealt with by SfE would be transferred back to the local authority at this point.

It was envisaged that the remaining local elements of the regime, including statutory standards committees with the power to suspend councillors, would be abolished on 1 July 2012. All matters for consideration by Standards Committees would be handled under the new regime by the local authority in question at this point. In addition to this the new standards arrangements which included a 'Nolan –based' code of conduct, the involvement of an independent person in allegations of misconduct , and a new criminal offence for failing to declare or register an interest, would also come into force.

Confirmation was provided to the Committee that the 'parent' local authority would be responsible for determining complaints made against parish councils within their borough, but each parish would be required to adopt its own code of conduct.

Decision – that the Committee noted the information presented.

Dated.....

Signed.....

WARRINGTON BOROUGH COUNCIL

STANDARDS COMMITTEE – 25th July 2012

Report of the: Solicitor to the Council
Report Author: Timothy Date
Contact Details: Email Address: Telephone: 01925 442150
tdate1@warrington.gov.uk
Ward Members: All

TITLE OF REPORT: THE LOCALISM ACT 2011 – THE AMENDED STANDARDS REGIME

1. PURPOSE

To advise the Standards Committee of the next steps that need to be taken to implement the requirements of the Localism Act 2011 in relation to member conduct

2. CONFIDENTIAL OR EXEMPT

This report does not contain information that is either confidential or exempt

3. INTRODUCTION AND BACKGROUND

At its meeting on 25th June 2012 the Council took significant initial steps to respond to the emerging statutory settlement in relation to member conduct. Amongst other things the Council:

- adopted a basic Code of Conduct with a request to this Committee to consider the merits of any alternative Code
- adopted the requirements of the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012.
- requested this Committee to consider any outstanding matters relating to the new standards regime; and
- requested a further report on these matters be brought to its September 2012 meeting.

This report describes the changes that have been made to the pre existing framework and recommends the actions now required to implement the new regime.

4. 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.

5. STANDARDS COMMITTEE

- 5.1 The Act repeals Section 55 of the Local Government Act 2000, which provided for the former statutory Standards Committee. There is no mandatory requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that there is a strong case to have a new Standards Committee. Such Committee will be an ordinary Committee of Council, without the unique features which were conferred by the previous legislation
- 5.2 The composition of the Committee will be governed by proportionality, 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;
- 5.3 The former 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 in relation to standards matters. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.
- 5.4 The 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 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 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).

Recommendation 1 –

- a. **That the Council establish a Standards Committee comprising 5 elected members of the Council, appointed proportionally in confirmation of its decision of 21st May 2012;**
- b. **That at a future meeting the Standards Committee consider inviting a maximum of three Parish Councillors to be co-opted as non-voting members of the Committee;**

6. THE CODE OF CONDUCT

6.1 The former ten General Principles and Model Code of Conduct have now been repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council is 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. At its meeting on 25th June 2012 the Council adopted a basic Code of Conduct complying with the formal requirements.

6.2 Officers have monitored the approach being taken by other Councils in respect of Codes of Conduct since the 25th June 2012 meeting and the Code then adopted is consistent with best practice elsewhere.

Recommendation 2 –

- a. **That the Council re-adopts the Code of Conduct approved at its 25th June 2012.**

7. DEALING WITH MISCONDUCT COMPLAINTS

7.1 Arrangements

The Act requires that the Council adopt arrangements for dealing with complaints of breach of Code of Conduct both by Warrington Borough Council members and by Parish Council members, and that such complaints can only be dealt with in accordance with those arrangements. Consequently, 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 revised position is that the Act repeals the requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own procedures, 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 a Standards Committee and to the Monitoring Officer.

7.2 **Decision whether to investigate a complaint**

In practice, the former 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 he feels that it would not be appropriate for him to take a decision on it, for example where he 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. If this function is delegated to the Monitoring Officer, it is most important that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a quarterly report to Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs. Such a requirement would establish a mechanism to challenge any Monitoring Officer decisions and contribute to greater transparency and public confidence.

7.3 **“No Breach of Code” finding on investigation**

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the former requirement was that this was to be reported to a 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 he feels appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person and Chair of the Committee to enable them to get an overview of current issues and pressures, and that the Monitoring Officer provides a summary report of each such investigation to Standards Committee for information.

7.4 **“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. It may be that an investigation report could 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 a summary report for information being submitted 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.

7.5 **Action in response to a Hearing finding of failure to comply with Code**

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. This represents a significant departure from the former position. Where a failure to comply with the Code of Conduct is found, the range of actions which the Council can take in respect of the member is limited and must be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than punishing the member concerned. In practice, this might include the following –

- 7.5.1 Reporting its findings to Council (*or to the Parish Council*) for information;
- 7.5.2 Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 7.5.3. Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 7.5.4 Instructing the Monitoring Officer to (*or recommend that the Parish Council*) arrange training for the member;
- 7.5.5 Removing (*or recommend to the Parish 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*);
- 7.5.6 Withdrawing (*or recommend to the Parish Council that it withdraws*) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- 7.5.7 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.

In respect of Parish Councils, 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 Standards Committee may wish to monitor the efficiency of the powers available to it in this respect as part of an initial work programme.

7.6 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. Any 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.

Recommendation 3 – That the Standards Committee be invited to recommend to the Council meeting to be held on 10th September 2012–

- 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. That he be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to Standards Committee on the discharge of all functions delegated to him;**
- c. **Where an 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 an 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, he is to report the investigation findings to a three voting member sub committee of the Standards Committee for determination;**
- e. **That Council delegate to a three member sub committee 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 Council (*or to the Parish Council*) for information;**

- **Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub Committees of the Council;**
- **Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;**
- **Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;**
- **Removing (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed for nominated by the authority (or by the Parish Council);**
- **Withdrawing (or recommend to the Parish Council that it withdraws) 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.**

8. Independent Person(s)

- 8.1 The Localism Act 2012 requires Councils to appoint one or more Independent Persons as part of the new Standards Framework.
- 8.2 The views of an Independent Person must be sought and taken into account by the Council before it makes a finding that any member has failed to comply with the Code of Conduct or imposed any sanction. The views of an Independent Person may be sought on whether to investigate a complaint and how to deal with a particular allegation.
- 8.3 The Localism Act itself prevented any member who had been a member or co-opted member of the Council in the last five years from being appointed as an Independent Person. This meant that current or past Independent Members of the Council's Standards Committee were prevented undertaking this new role. That approach provoked significant concerns nationally that those individuals with experience of the former standards regime were automatically excluded from participating in the new regime notwithstanding the skills and experience that they will have developed.
- 8.4 To address that concern transitional regulations have provided that persons who have previously been Independent Members may stand in recognition of the loss of skill and expertise which would otherwise arise. If any appointments are made after 24th July 2012 then such appointments may only be for 12 months.

Recommendation 4

That the Standards Committee consider the merits of appointing one or more of the former Independent Members of the Standards Committee as 'Independent Persons' for the purposes of the Localism Act 2011.

9. The Register of Members' Interests

- 9.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Regulations have now defines "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 registers for Parish Councils, which also have to be open for inspection at Council offices and on relevant website.

At its 25 June 2012 meeting the Council adopted the requirements of the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012. Members have been asked to make the required declarations on a form provided by 29th July 2012.

Unfortunately there is some national debate concerning whether the Regulations have been properly drafted. In that context the Council's decisions on 25th June 2012 appear to be the safest in the circumstances but it may be that the Council may have to address registration issues further at its 10th September 2012 meeting or subsequently.

Recommendation

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;

10. FINANCIAL CONSIDERATIONS

- 10.1 The requirements of the new arrangements will be met within existing budgets.

11. RISK ASSESSMENT

- 11.1 Failure to adopt appropriate arrangements could lead to reputational damage.

12. EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT

- 12.1 Democratic and Members Services has an up to date Equalities Impact Assessment in place for its functions and policies and has introduced an Action Plan to deal with key matters arising.

13. CONSULTATION

13.1 Group Leaders were consulted on the requirements of the registration prior to the 15th June 2012 Council meeting.

14. RECOMMENDATION

14.1 To consider the recommendations set out in paragraphs 5.4, 6.2, 7.6, 8.4 and 9.1 of this report.

15. BACKGROUND PAPERS

Contacts for Background Papers:

Name	E-mail	Telephone
Timothy Date	tdate1@warrington.gov.uk	01925 442150

16.	Clearance Details	Name	Consulted		Date Approved
			Yes	No	
	Overview and Scrutiny Committee Chair			✓	
	Relevant Executive Board Member			✓	
	SMB			✓	
	Relevant Executive Director			✓	
	Solicitor to the Council			✓	
	S151 Officer			✓	
	Relevant Assistant Director			✓	