

STANDARDS COMMITTEE

Wednesday, 11th May, 2011

10.00 am

**Wantsum Room, Sessions House, County Hall,
Maidstone**



AGENDA



STANDARDS COMMITTEE

Wednesday, 11th May, 2011, at 10.00 am

Wantsum Room, Sessions House, County Hall, Maidstone

Ask for:

Peter Sass

Telephone:

01622 694002

Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room

Membership

Miss R MacCrone (Chairman), Mr L Christie, Mr D S Daley, Mr K A Ferrin, MBE,
Mrs N Ahmed Mr P Gammon, MBE

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

- 1 Substitutes/apologies
- 2 Declarations of Interest
- 3 Minutes of the meeting held on 8 February 2011 (1 - 4)
- 4 Members' Annual Reports (5 - 6)
- 5 The Localism Bill - proposed changes to the Standards regime (7 - 20)
- 6 Standards Committee Work Programme and future meeting dates (21 - 22)
- 7 Any other urgent business
- 8 Date of Next Meeting: 14 July 2011

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services
(01622) 694002

Tuesday, 3 May 2011

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

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KENT COUNTY COUNCIL

STANDARDS COMMITTEE

MINUTES of a meeting of the Standards Committee held in the on Tuesday, 8 February 2011.

PRESENT: Miss R MacCrone (Chairman), Mr L Christie, Mr D S Daley, Mr P Gammon, MBE

IN ATTENDANCE: Mr P Sass (Head of Democratic Services and Local Leadership)

UNRESTRICTED ITEMS

1. Substitutes/apologies

(Item 1)

The Chairman reported apologies from Mrs Ahmed and also Mr Wild, the Director of Law and Governance and the Council's Monitoring Officer.

2. Declarations of Interest

(Item 2)

There were no declarations of interest made by Members of the Committee.

3. Minutes of the meeting held on 15 July 2010

(Item 3)

In relation to Minute 4 on page 3 of the agenda, Mr Gammon stated that it was an eye-opening and enlightening experience to shadow Mrs Dean and Mr Alex King. He paid tribute to how hard elected Members worked for their residents and expressed his amazement about the depth and breadth that the Members had of a wide range of subjects.

Mr Daley expressed his gratitude for Mr Gammon's comments, adding that Mr Christie's role as a Group Leader was even more impressive as his group's resources were spread more thinly between the various policy areas than his own group.

Mr Christie expressed his thanks to Mr Gammon for his comments about the work of elected Members.

On a separate matter, Mr Sass undertook to check if it was possible to obtain access statistics for the Members' Annual reports on KCC's website and, if so, to circulate these reports to Members of the Standards Committee.

Resolved: that the minutes of the meeting held on 15 July 2010 be approved as a correct record and signed by the Chairman.

4. The Localism Bill - proposed changes to the Standards regime

(Item 4)

The Committee considered a report from the Head of Democratic Services and Local Leadership in relation to the proposed changes to the standards regime, as proposed in the Localism Bill.

Following a detailed debate covering many aspects, the following conclusions were made:

- In order to maintain and improve public confidence in the activities and behaviour of its elected Members, Kent County Council should retain a voluntary code of conduct if the changes proposed in the Localism Bill come to fruition.
- It is key that the Council should retain some form of review independent of the Council's Executive. This could take the form of a continuation of, or a variation on, the current Standards Committee system with independent Members – although alternative ways could be explored that have an independent element to it. The issue of Member training also needs to be addressed either by being incorporated in (some form) a Standards Committee function or become part of the Executive function.
- The voluntary structure need not be expensive to operate; but it was hoped that the small cost would be regarded as a reasonable price to pay to achieve the main objective of high public confidence in KCC's elected Members
- There should also be a mechanism for dealing with complaints that a Member has failed to follow the Voluntary Code of Conduct but that there is an opportunity to work with elected Members of all political groups to ensure that any complaints process is both appropriate and fleet-footed. It was also suggested that there should be a filtering process; perhaps by ensuring that the Monitoring Officer has more power to deal with minor complaints
- There should also be a discussion with the political group leaders about the role that group disciplinary rules would have in any future standards regime, particularly given the duty that local authorities will have to promote high standards of conduct
- It should be acknowledged that the role of the Members' Annual Reports as a mechanism for recording the activities of elected Members throughout the year was an excellent discipline and should continue
- Further clarification is needed in relation to the proposed alleged criminal offence of failing to declare certain interests, i.e. if a voluntary code and complaints process was retained, how and when would it be appropriate for such a matter to be investigated internally?
- The role of the Monitoring Officer and his Deputy would require clarification once the new arrangements were introduced.
- The opportunity should be taken to see if the arrangements that applied for Kent could also be applied collaboratively to other local authorities in the County and whether there was an opportunity to explore joint arrangements.

Resolved: that (1) the contents of the report be noted; and

(2) a further report be submitted to the next Committee meeting and that the Group Leaders be invited to attend to enable more detailed discussion of the various options.

5. Complaints Monitoring

(Item 5)

Resolved: that the contents of the Complaints Monitoring report be noted.

6. Standards Committee Work Programme and future meeting dates

(Item 6)

Resolved: that the contents of the report be noted and that the meeting on 17 March be cancelled and the Group Leaders be invited to attend the meeting on 11 May to discuss the future of the ethical standards regime.

7. Date of Next Meeting

(Item 8)

The Committee agreed that its next meeting would be 11 May 2011.

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By: Fiona Leathers – Chairman of the Independent Remuneration Panel
Peter Sass – Head of Democratic Services

To: Standards Committee – 11 May 2011

Subject: Members' Annual Reports

Classification: Unrestricted

Summary: This report contains the comments of the Independent Remuneration Panel on the Members' Annual reports for 2010/11

FOR INFORMATION

1. The Independent Remuneration Panel met on 28 April 2011, to consider Members' Annual reports for 2010/11. The Panel was slightly disappointed with the overall response rate this year, with only **79** reports being received before the Panel met, compared to the previous year's excellent response, when 83 reports were received before the Panel meeting. The Panel was not aware of any obvious reasons for any of the late reports this year and the Standards Committee may well conclude that the five Members who didn't submit their reports on time should be mentioned by name in the Committee's Annual Report to the County Council.
2. The Panel were pleased, however, with the high overall standard of most of the reports received in that Members had taken seriously the need to account for their time on County Council work; supply details of their remuneration; and to explain clearly how they make themselves available to their constituents. The Panel noted, however, that staff in Democratic Services had supplied in advance detailed information about Members' attendance at formal meetings and the utilisation of each Member's Individual Grant, which it is hoped was helpful to Members. The Panel has written to Group Leaders individually, highlighting those reports submitted by Members of their groups that the Panel thought were of very high quality, and also those of poor quality, so that best practice examples can be shared within each group, with the expectation that the general quality will improve further next year.
3. Many Members sent an annual letter to their constituents, including details of how they spent the Local Community Grant; some Members mentioned that they regularly walk round their electoral divisions to talk to constituents, and some Members mentioned that they maintain their own websites to provide information to constituents and a means of contact. The Panel considered that this was excellent practice.
4. The following issues were raised by the Panel:
 - The overall standard of Members' Annual Reports was higher than previous years, although the Panel noted that staff in Democratic Services had supplied some information up front and most Members sought the assistance of staff in the Member Support Team to type their reports

- The detail provided about the receipt of Members' Allowances, both within KCC and other public authorities was much improved, compared to previous years, although the Panel were surprised that only one elected Member stated that he was a non-executive Director of a Health Trust and many Members did not give a correct total of allowances received; this is being corrected by the Member Support Team
- The level of detail provided about the availability of training and development activity for Members was good, with only 14 Members having said that they did not undertake any training during the year, but the Panel was disappointed that the "benefits of training" information was sparse

Recommendation

5. The Committee is invited to receive the report from the Chairman of the Independent Remuneration Panel and comment accordingly

Copies of the Members' Annual Reports are attached for Members of the Standards Committee. Additional copies, if required, can be obtained from Peter Sass (01622 694002).

By: Peter Sass - Head of Democratic Services

To: Standards Committee – 11 May 2011

Subject: The Localism Bill – proposed changes to the Standards regime

Summary: To discuss with Group Leaders the implications of the proposals in the Localism Bill to abolish the standards regime and to determine a way forward with regard to the detailed examination of the main options for the future.

Unrestricted

Background

1. At its meeting on 8 February 2011, the Standards Committee considered a report (attached as **Appendix 1**), which outlined the relevant provisions of the Localism Bill in relation to the future of the ethical standards regime, and noted that the proposed changes would be implemented in early 2012. The Committee agreed to invite Group Leaders to this meeting to enable more detailed discussion of the various options open to the Council, following which a more detailed options paper will be prepared for the next meeting of the Committee.

2. Since the Committee's previous meeting, the Local Government Group (part of the Local Government Association (LGA)) and the Association of Council Secretaries and Solicitors (ACSeS) have jointly published a useful briefing document on maintaining high ethical standards in local government (attached as **Appendix 2**).

Key Questions

3. The Committee's consideration of the previous report, together with further discussions that have taken place between officers within the local government community in Kent, have highlighted a number of key questions for further discussion:

- (a) How should KCC respond to the proposed new duty to promote high standards of conduct amongst Members?
- (b) Should KCC have a voluntary code of conduct and a voluntary Standards Committee (or other Member-level body) with responsibility for monitoring compliance with a voluntary code?
- (c) If KCC decided to have a voluntary code and a voluntary Standards Committee, what role would independent Members have? Section 102(3) and (4) of the Local Government Act 1972 enables an authority to appoint co-opted members to a new Standards Committee, but Section 13 of the Local Government and Housing Act 1989 would mean that any such co-opted Members were non-voting, unless the Standards Committee was merely advisory, i.e. that it made recommendations only to the County Council.

- (d) How would KCC deal with complaints that a Member had breached a voluntary code?
- (e) What role could the Monitoring Officer and his staff have in policing a voluntary code and in dealing with training for Members and low-level complaints?
- (f) What role could group and party discipline have in ensuring good conduct amongst elected Members?
- (g) Could a regional solution be explored, perhaps hosted by the County Council, as a chargeable service for District, Borough and Parish Councils, particularly in relation to training and complaint handling?

Recommendation

4. The Committee is invited consider this report and determine a way forward with regard to a detailed examination of the main options for the future.

Peter Sass
Head of Democratic Services
3 May 2011

By: Peter Sass - Head of Democratic Services and Local Leadership

To: Standards Committee – 8 February 2011

Subject: The Localism Bill – proposed changes to the Standards regime

Summary: To discuss the implications of the proposals in the Localism Bill to abolish the standards regime and to determine a way forward with regard to the detailed examination of the main options for the future.

Unrestricted

Background

1. The Localism Bill was published in December 2010. This report focuses on the implications the Bill will have for supporting and enforcing high standards of conduct amongst elected and voting co-opted Members of Kent County Council, subject to enactment and change through the legislative process. Much of the content of the Bill has been raised previously in speeches and press releases and there are very few surprises in the drafting. However, while some of the more fundamental issues are addressed in the primary legislation, much has been reserved for secondary legislation, which has yet to be published, even in draft. The reforms proposed to the existing standards regime are radical in nature and it is unclear how some will work in practice.

2. The implementation of the proposed changes appears likely to be with effect from early 2012. Any cases that have begun will proceed to their conclusion but all will have to be dealt with by the Standards Committee as Standards for England will no longer be available. The Standards Committee in its current statutory form will remain in place until all outstanding cases have been dealt with.

The main provisions

3. The main provisions are contained in chapter 5 of the Localism Bill. Further provisions are set out in Schedules 4 and 24.

- (a) The Bill abolishes the standards regime overseen by Standards for England, including the model Code of Conduct for Members of relevant authorities in England and their standards committees. The abolition arrangements also affect the First Tier Tribunal (Local Government Standards in England) under the jurisdiction of the Ministry of Justice because the Tribunal will receive no further cases after those that it is already dealing with on the abolition date have been determined. The appointed day is likely to be two months after the coming into force of the provisions.
- (b) Local Authorities will be under a duty to promote high standards of conduct. The new arrangements for standards to help them comply with this duty will

be part voluntary and part mandatory, with criminal sanctions where certain interests are concerned.

- (c) Standards for England will no longer exist and none of its functions transfer to any other body. There will no longer be a requirement for relevant authorities to adopt a code of conduct for their Members or to appoint Standards Committees and there will be no mandatory enforceable code of conduct for Members that they have to undertake to follow when they take up office
- (d) Matters relating to standards will be the function, i.e. the responsibility of the authority (not the Executive) and the adoption of a voluntary code must be done by the authority as a whole.
- (e) The duty and any voluntary arrangements adopted by an authority still only apply to Members who can vote; therefore non-voting co-opted Members will not be covered by any new arrangements.
- (f) Relevant authorities can create a voluntary code either by revising an existing code or adopting a new one. Because the code is voluntary, an authority can also withdraw its existing code without replacement. The authority can publicise what it has done about the code as it sees fit.
- (g) Where an authority has adopted a code, it can put in place any procedure it wishes to deal with complaints and take any action it sees fit, but this may exclude suspension or disqualification as these sanctions are expressly forbidden by provisions relating to how the council deals with failure to register or declare interests. If an authority chose to have a standards committee, it would be regarded as an “ordinary committee” of the authority and, therefore, not need to have independent representation.
- (h) The arrangements regarding interests and criminal sanctions will be dealt with by way of Regulations issued by the Secretary of State and the main requirement to maintain a register will remain with the Monitoring Officer. Regulations will be able to specify the interests to be registered; the requirements for disclosure; participation in decision-making; dispensations; sanctions and access and publicity arrangements for the register. Prosecutions in relation to interests can only be brought with the consent of the Director of Public Prosecutions (DPP) and will be dealt with in a Magistrates’ Court. Offences will relate to a failure to register; a failure to disclose; and, taking part in relevant local authority business.

Changes to the common law pre-determination rules

4. Although not a conduct matter as such, it is also worth noting the changes proposed in the Bill to the rules about “predetermination”, which have developed in case law. Currently, if a member participates in decision-making, particularly quasi-judicial decision-making, with a closed mind, this may be a ground upon which a decision can be judicially reviewed. Case law has established that it is acceptable for a member to have a predisposition towards making a particular decision about a matter before hearing the arguments, but must not have decided which way to vote in advance. Recent court decisions have recognised more clearly than in the past the

role that local politics and campaigning can play in the decision-making process and have recognised that elected members would be entitled, and indeed expected, to have, and to have expressed, their views on local issues, including, for example, planning issues.

5. Under the provisions in the Bill, a decision maker is not to be taken to have had, or have appeared to have had, a closed mind when making the decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, relevant to the decision. This doesn't entirely do away with the pre-determination issue. In a recent letter to all Council Leaders, the Minister for Housing and Local Government mentioned this provision but said in addition:

“of course councillors will still need to be open minded at the point of decision in the sense of listening to all the arguments and weighing them against their preferred outcome, before actually voting.”

Decisions to be made by the County Council

6. The County Council will need to make a number of decisions in due course in respect of its future approach to Members' conduct, including the following:

- (a) whether to have a code of conduct at all
- (b) If it has a code, what form that will take and whether it will seek to adopt provisions that are either the same or similar to those being adopted elsewhere in Kent
- (c) What procedures to have in place for the investigation of complaints about the conduct of members, whether or not a voluntary code is adopted
- (d) How it intends to undertake the duty to promote and maintain high standards of conduct and what future role it sees, if any, for a standards committee.

Conclusion

7. The proposals in the Localism Bill for changes to the conduct regime for local authority members will make sweeping changes to the current arrangements. A number of decisions will need to be made by the County Council in due course to implement the changes and the Committee is asked to consider and comment upon the information in this report as an early contribution to the debate that must be had. The Committee may also wish to meet formally or informally with the Group Leaders to discuss the various decisions that need to be made.

Recommendation:

3. The Committee is invited consider this report and determine a way forward with regard to a detailed examination of the main options for the future.

Peter Sass – Head of Democratic Services and Local Leadership
January 2011

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MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Localism Bill published on 13th December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

FIDUCIARY DUTY OF COUNCILLORS

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

REGISTERING INTERESTS

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

CIVIL LAW

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

Undue influence: Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

Bribery: Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

Treating: Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

Personation: Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

Postal and proxy voting: Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

False information in nomination papers: Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

False information in relation to registration: Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

The Electoral Administration Act 2006 created two new offences which are:

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

AUDIT COMMISSION FOR LOCAL AUTHORITIES

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

“We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you”

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

BIAS, PREDISPOSITION AND PREDETERMINATION

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

MISCELLANEOUS

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

FURTHER CONTACT

Chris Bowron, Local Government Group e-mail – chris.bowron@local.gov.uk

By: Peter Sass - Head of Democratic Services
To: Standards Committee – 11 May 2011
Subject: Standards Committee Work Programme and future meeting dates

Summary: To consider the Committee's forward work programme.

Unrestricted

Background

1. At the Committee's meeting on 25 November, 2008, it was agreed that the Head of Democratic Services would formulate a work programme for the Committee's consideration and also, in consultation with the Chairman, agree a series of future meeting dates, so that all Members can ensure they are available to attend Committee meetings.

2. Accordingly, attached at **Appendix 1** is a suggested work programme based on relevant aspects of the Committee's work in previous years, together with the conclusions reached at a previous meeting about the Committee's future role.

Recommendation:

3. The Committee is invited to consider and agree the Committee's future work programme and proposed meeting dates (Appendix 1)

Peter Sass – Head of Democratic Services

3 May 2011

Standards Committee Work Programme – 2010/11

Meeting	Item	Source (*Standard item unless stated)
11 May 2011	The Localism Bill – proposed changes to the Standards regime	
	Members' Annual Reports	
	Work Programme and future meeting dates	
14 July 2011	The Localism Bill – proposed changes to the Standards regime	
	Annual Meeting with Group Leaders	
	Monitoring of Complaints	
	Work Programme and Future meeting dates	
17 November 2011	The Localism Bill – proposed changes to the Standards regime	
	Work Programme and Future Meeting dates	