

By: Geoff Wild, Director of Governance and Law
To: Standards Committee – 7 March 2012-03-01
Subject: Localism Act 2011 – Changes to Standards Regime
Classification: Unrestricted

FOR DECISION

SUMMARY

This report advises the Committee of:

1. the provisions relating to the Standards regime contained in the Localism Act 2011;
2. the changes which the Council will need to make to its Standards arrangements as a result; and
3. options for making these changes.

The Committee is invited to make comments on these options for further consideration by both officers and Members, with a view to submitting a report containing final proposals in early May, so that they can be adopted by the Council at its annual meeting on 17 May.

Background

1. The Government's Localism Bill completed its passage through Parliament and received Royal Assent as the Localism Act 2011 on 15 November 2011. Following Government amendments made during the Bill's passage through the House of Lords, the Standards provisions in the Act are significantly different to those contained in the original Bill. Specifically, all local authorities will now be required to:
 - (a) adopt a Code of Conduct for Members (with considerable discretion about what it contains)
 - (b) establish a procedure for dealing with complaints that Members have breached the Code and
 - (c) appoint one or more 'Independent Persons' to assist with the consideration of complaints.
2. The Act will require the Council to make major changes to its Standards arrangements, and the Government has recently indicated that the date for implementation of these changes will be 1 July 2012. This report sets out the changes that will be required and, where possible, options for making those changes. The Committee is invited to make comments on the options and the

Committee's views will be developed by Officers and Members to draft final proposals for consideration by the Committee in late April/early May, prior to being reported to the Council on 17 May for determination. Once adopted, it is proposed that there would be a concentrated period of training and briefing for Members on the new arrangements and the revised code before they come into operation on 1 July 2012.

Requirements of the New Standards Regime under the Localism Act 2011

Duty to Promote and Maintain High Standards of Conduct

3. The Council will remain under a statutory duty to promote and maintain high standards of conduct by its Members. It is proposed that in order to comply with this duty, the Council will:
 - (a) Adopt a new Code of Member Conduct
 - (b) Set up and maintain arrangements for the receipt and investigation of complaints
 - (c) Continue with its Member Development Programme
 - (d) Continue to provide officer Support to Members and the decision-making process
 - (e) Continue with the existing system of Members' Annual Reports

Code of Conduct for Members

4. The current Model Code of Conduct and Ten General Principles will be repealed, and Members will no longer have to give an undertaking on appointment to the Council to comply with the Code of Conduct. Instead, the Council will be required to adopt a new Code (or revise its existing Code) to govern the conduct of its Members (but only when they are acting in their capacity as Members). The new Code must, when viewed as a whole, be consistent with the following seven principles:
 - (a) Selflessness
 - (b) Integrity
 - (c) Objectivity
 - (d) Accountability
 - (e) Openness
 - (f) Honesty
 - (g) Leadership
5. The Ten General Principles in the existing Code also included "personal judgement", "respect for others", "duty to uphold the law" and "stewardship (of the Council's resources)". Given that these will no longer automatically apply, the Committee's views are sought as to whether they should be included in the new Code at the Council's discretion.

6. The new Code must also include provisions in respect of the registration and disclosure of “pecuniary interests” (which will be defined in Regulations to be made under the Act) and other interests (see paragraph 17, below).
7. The Council will have discretion as to what it includes within its new Code, provided that it is consistent with the seven principles and covers interests. The possibility exists, of course, for different authorities to adopt Codes containing widely different discretionary provisions, which will create problems for Members who serve on more than one local authority. This problem is particularly relevant for KCC because many of its Members are twin, triple or even quadruple hatted, being also members of district/borough councils, Town/Parish Councils and/or the Fire Authority. It is expected that, once the Regulations defining pecuniary interests are issued, a model Code will be issued by one of the national local government organisations and will be discussed and agreed amongst the Kent authorities, to ensure that, so far as possible, a consistent and uniform approach is adopted. At this stage, therefore, the Committee is invited to support the development of a Kent-wide Code of Conduct, for the reasons stated above, and note that further work will be done on this important aspect between now and the next meeting of the Committee.

Standards Committee

8. The Act repeals the requirement for English authorities to have a statutory Standards Committee. The Council will therefore need to abolish its existing Standards Committee with effect from 30 June 2012. The Committee’s Terms of Reference are attached as **Appendix 1**. While the Act transfers some of these (e.g. interest dispensations, politically-restricted post exemptions, etc) elsewhere, the Council will need to decide how to deal with the day-to-day functions relating to promoting and maintaining high standards of conduct (advice and training, Code of Conduct, procedure for dealing with complaints against Members) and the Committee’s additional role of reviewing Members’ Annual Reports each year. There are various options for doing this as set out below:
 - (a) Keep the existing Standards Committee, with its existing composition, as an advisory committee under section 102(4) of the Local Government Act 1972. However, the usefulness of an advisory committee would be limited as it would not be able to take decisions about the handling of any complaints that may arise. In addition, it is likely that the Council would expect in future to receive its independent advice on Standards issues from the one or more ‘Independent Persons’ that the Localism Act requires it to appoint.
 - (b) Re-establish the Standards Committee as an Ordinary Committee of the Council. This would mean that its Members would all be drawn exclusively from the Members of the Council on the basis of political proportionality, unless the Council decided to disapply proportionality. The Independent Person(s) could be co-opted onto the Committee but would not have any voting powers.

- (c) Add these functions to the Terms of Reference of an existing Committee of the Council (the Governance and Audit Committee appears to offer the best fit), with the Independent Person(s) invited to attend meetings for discussion of any standards-related items
 - (d) Leave these functions to be dealt with by the full Council.
9. In considering which of the above options is most suitable, it is worth recalling that the workload of the Standards Committee over the last few years has been mixed and unpredictable. The Council received and dealt with a variety of formal complaints about the conduct of Members when the rules on local determination were introduced in May 2008, but since then, the Committee's workload has been relatively light, straightforward and manageable. The Committee has been clear in its recent Annual Reports to the Council that the general level of Member Conduct within the Council is very good and that KCC's Standards Committee is not as busy as at some other councils.

Arrangements for Dealing with Misconduct Complaints

10. The Act abolishes the current local determination regime. Instead, the Council will be required to have in place arrangements under which allegations that Members (and co-opted Members with voting rights) have breached the Code of Conduct can be investigated and decisions on those allegations taken. This means that the arrangements must set out in some detail the process for dealing with complaints of misconduct and the actions that may be taken against a Member who is found to have failed to comply with the Code.
11. Because there will no longer be any statutory powers under which the Standards Committee or Monitoring Officer can deal with complaints, the Council will need to delegate appropriate powers to the relevant Committee and/or the Monitoring Officer, including decisions on whether to investigate a complaint, how to manage and investigate them, how to deal with "breach" and "no breach" decisions, and actions/sanctions available where a breach is found.
12. The Act abolishes existing sanctions under the local determination regime and does not give the Council any new powers to impose sanctions, such as suspension or imposing a requirement on Members to undergo training or make an apology. Thus, where a failure to comply with the new Code of Conduct is found, the range of actions which the Council can take is limited to what was available before the Standards regime introduced by the Local Government Act 2000 took effect. In practice, this might include the following:
- (a) Formally reporting the findings to full Council (naming and shaming);
 - (b) Recommending to the Leader of the Member's Group (or in the case of ungrouped Members, recommending to the Council or the Committees concerned) that they be removed from any or all of the Committees on which they serve;
 - (c) Removing the Member from any or all of their appointments to outside bodies;

- (d) Instructing the Monitoring Officer to arrange training for the Member;
 - (e) Restricting the Member's access to Council resources (e.g. internet) or excluding the Member from the Council's premises, except as necessary to attend formal Council or Committee meetings.
13. There is no requirement to put in place any appeals mechanism against decisions on complaints, either for complainants or the Member who is the subject of the complaint.

Independent Person(s)

14. The "arrangements" must include provision for the appointment by the Council of at least one Independent Person (IP), whose views:
- (a) Must be sought, and taken into account, before the Council makes a decision on an allegation that it has decided to investigate;
 - (b) May be sought by the Council in other circumstances;
 - (c) May be sought by a Member of the Council who is the subject of an allegation.
15. The IP cannot be, or have been within the previous five years, a Member, co-opted Member or officer of the Council, nor can they be a relative or close friend of any existing Member, co-opted Member or officer. The definition of 'co-opted Member' in the Act appears to preclude the existing independent members of the Council's Standards Committee from appointment as one of its IPs. It would therefore be sensible for the Council to treat the existing independent members of its Standards Committee as ineligible for appointment as an IP. Fortunately, the Act does not prevent existing independent members of an authority's Standards Committee from being appointed as an IP by another authority, and it is to be hoped that this will ensure that the expertise in standards issues built up over the last decade or so by independent members of Standards Committees is not completely lost to local government.
16. The Act gives discretion to local authorities to appoint more than one IP, and to pay them allowances and expenses, but provides that each IP must be consulted before any decision is taken on a complaint which has been investigated. There would, therefore, appear to be little advantage for the Council to appoint more than one IP, although it may be sensible to retain one or more candidates as reserve IPs who can be appointed at short notice, without the need for re-advertisement, in case the IP stands down or is unavailable for any reason. As it is clear that this particular aspect of the Act will not alter and is not subject to further regulations, it is proposed that officers be instructed to commence the recruitment process for the IPs and delegate authority to the Head of Democratic Services to place the necessary advertisements, in consultation with the Deputy Leader and the Chairman of the Standards Committee. Before doing so, however, the Committee is invited to advise on a request from the Kent and Medway Fire and Rescue Authority (KMFRA) to jointly-appoint and share IPs between the two authorities.

Interests

17. The Act abolishes personal and prejudicial interests. Instead, Regulations will define “Disclosable Pecuniary Interests” (DPIs). The Monitoring Officer is required to maintain a Register of Interests (both DPIs and ‘discretionary interests’ – other interests, registration and disclosure of which the authority chooses to include in its Code of Conduct), which must be available for public inspection and available on the authority’s website (as is the Council’s existing Register). At present, it is not known how DPIs will be defined, but they are expected to be broadly similar to the current prejudicial interests. The Act extends the requirement for registration to cover not just the Member’s own interests, but also (if the Member is aware of the interest) those of their spouse or civil partner, or someone living with the Member in a similar capacity.
18. Members must register all DPIs within 28 days of their election or appointment. Failure to register DPIs is made a criminal offence, but would not prevent the Member from acting as a Member. Failure to register discretionary interests would not be a criminal offence, although it would, of course, be a failure to comply with the Code.
19. There is no longer a continuing requirement for a Member to keep their DPI registration up to date, except on re-election or re-appointment. Thus, Council Members will only be legally obliged to update their DPI registration once every four years. However, the Committee’s views are sought on whether it would be sensible for the Council’s Code of Conduct to require Members to update their DPI registrations as and when changes occurred. In addition, all KCC Members are currently invited to review and update their existing register of interests every 12 months and, again, the Committee’s views are sought as to whether this should continue under the new arrangements. In any case, Members will be required to register a previously-unregistered DPI if they have to disclose it at a meeting they attend because it relates to a matter discussed there. Whenever Members give notification of additional DPIs, the Monitoring Officer has to ensure that they are entered onto the Register of Interests.
20. If a Member has a DPI in any matter considered at a meeting at which that Member is present, and the Member is aware of that interest, they must disclose the interest to the meeting. It is not clear whether the Member needs to explain the nature of the interest, and the Committee’s views are sought as to whether this should be covered by the new Code. This requirement applies to Council and committee meetings, but not explicitly to other informal meetings, although again, the Committee’s views are sought as to whether this should be covered by the new Code.
21. The Act states that Members do not need to disclose a DPI at a meeting if they have already registered it, or even just sent off a request to the Monitoring Officer to register it (a “pending notification”). This would mean that other Members, officers, and members of the public attending the meeting would not know about the interest unless they had checked the Register of Interests prior to the meeting. This might be considered as a potential loophole in the legislation and the Committee’s views are sought as to whether the new Code

should require Members to disclose any DPI (whether previously registered or not) at a meeting.

22. If a Member attending a meeting has a DPI in any matter to be discussed at that meeting, they must not participate in any discussion of, or vote on, the matter. To do so would be a criminal offence. The Act does not require the Member to leave the room while the matter is being considered, but the Committee's views are sought as to whether the new Code and Standing Orders should provide for this.

Sensitive Interests

23. The Act effectively re-enacts the existing provisions on Sensitive Interests. Thus, where a Member is concerned that disclosure of the details of an interest (whether a DPI or a discretionary interest) at a meeting or in the Register of Interests would lead the Member, or a person connected with them, being subject to violence or intimidation, that Member may request the Monitoring Officer to agree that the interest is a 'Sensitive Interest'. If the Monitoring Officer agrees, then the detail of the interest can be excluded from the published Register of Interests, and the Member merely has to disclose the existence of the interest, rather than the detail of it, at meetings where the matter to which the interest relates is being discussed.

Dispensations

24. The Act significantly changes the provisions on dispensations from the legal requirements relating to interests. First, the power to grant dispensations will be transferred from the Standards Committee to the Council itself, which can then delegate dispensation decisions to a committee or to the Monitoring Officer. Second, the grounds for the granting of dispensations will be changed to the following:
 - (a) Where so many Members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business" (i.e. the meeting would be inquorate)
 - (b) Where, without a dispensation, the representation of different political bodies on the body transacting the business would be so upset as to alter the likely outcome of any vote on the matter
 - (c) Where it is considered that granting the dispensation is in the interests of persons living in the authority's area
 - (d) Where it is considered otherwise appropriate to grant a dispensation
25. Any grant of a dispensation must specify how long it is to remain in effect, up to a maximum of four years.

Next Steps

26. The Committee is invited to give its views on:

- (a) the principle of adopting a new Code of Conduct
- (b) the future of the Standards Committee
- (c) arrangements for considering Standards issues after 30 June 2012
- (d) the arrangements for recruiting the Independent Person(s), as detailed in the recommendations (see paragraph 29)

27. At its meeting on 17 May 2012, it is proposed that the Council will be asked to:

- (a) appoint the Independent Person(s)
- (b) adopt a new Code of Conduct
- (c) agree the formal procedures for dealing with misconduct complaints
- (d) agree the formal procedures for granting dispensations

It would be helpful if the Standards Committee could hold a further meeting in late April or early May so that it can advise the Council on proposals for a new Code and for the new procedures, by which time the Regulations on DPIs are expected to be published.

RECOMMENDATIONS:

28. The Committee is requested to:

- (a) consider the contents of the report and comment as appropriate on the proposed changes to its Standards arrangements as follows:
 - (i) the proposals in paragraph 3 of the report in relation to the ongoing compliance with the statutory duty to promote and maintain high standards of conduct by Members;
 - (ii) Whether the general principles of conduct in public life that will no longer automatically apply to Members under the new arrangements, as described in paragraph 5 of the report, should be included in the new Code of Conduct;
 - (iii) Whether to support proposals for the development of a Kent-wide Code of Conduct, for the reasons outlined in paragraph 7 of the report;
 - (iv) Comment upon the most appropriate option for the future of the Standards Committee's functions, as described in paragraphs 8 and 9 of the report;
 - (v) Comment upon the number of Independent Persons KCC should appoint, as described in paragraph 16 of the report;

- (vi) Whether Members should be required under the new Code of Conduct to advise the Monitoring Officer of any changes to their Register of Interests within 28 days of being aware of the change and whether all Members should be requested to update their Register of Interests every 12 months, as described in paragraph 19 of the report;
 - (vii) Whether, under the new Code of Conduct Members should be required to disclose any pecuniary interests (whether previously registered or not) at formal and informal meetings; and
 - (viii) Whether, under the new Code of Conduct Members should be required to explain the nature of any pecuniary interest when it is disclosed at formal and informal meetings, as described in paragraph 20 of the report;
 - (ix) Whether, under the new Code of Conduct Members should be required to leave the meeting room while a matter is being considered in which they have declared a pecuniary interest
- (b) Subject to the Committee's views on recommendation (a)(v) above, delegate authority to the Head of Democratic Services to commence the recruitment process for the Independent Person(s), in consultation with the Deputy Leader and the Chairman of the Standards Committee, on the basis of it being a shared appointment between KCC and the Kent and Medway Fire and Rescue Authority (KMFRA)

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Terms of Reference of the Standards Committee

6 Members

Conservative: 1; Labour: 1; Liberal Democrat: 1; independent: 3.

The Chairman is appointed by the Council from among the independent Members. This committee has responsibility for:

- (a) promoting and maintaining high standards of conduct by Members, (including any co-opted Members and church and parent governor education representatives)
- (b) assisting Members through advice and training to observe the Members' Code of Conduct set out in Appendix 6 to the Constitution
- (c) monitoring the operation of the Members' Code of Conduct and advising the Council on its operation and revision
- (d) granting dispensations to Members from requirements relating to interests set out in the Members' Code of Conduct
- (e) seeking to resolve any concerns about a Member's conduct by mutual agreement to reduce the need for a complaint to be referred to the Standards Committee
- (f) Receiving complaints that a Member is alleged to have breached the Code of Conduct and deciding whether the matter merits investigation; taking appropriate action as defined in the Standards Committee (England) Regulations 2008; and reviewing decisions to take no action on a particular complaint if so requested by the complainant
- (g) dealing with any reports from a case tribunal or interim case tribunal of the Standards Board, and any report on a matter which is referred by an Ethical Standards Officer to the Monitoring Officer
- (h) censuring, suspending or partially suspending a Member or former Member in accordance with the provisions of the Local Government Act 2000.

Independent Members of the Standards Committee are recommended to the Council for appointment by a panel of three people (not Members of the Council) appointed by the Selection & Member Services Committee.

The Procedure Rules applying to Committee meetings also apply to meetings of the Standards Committee.