

STANDARDS COMMITTEE

Thursday 9 June 2011 at 6.30 pm

Council Chamber, Ryedale House, Malton

Agenda

1 Election of Chairman

2 Appointment of Vice Chairman

3 New Parish Representatives

Annual Council approved the appointment of three new Parish Representatives on the 19 May 2011. This is an opportunity for the new Members to introduce themselves to the Committee.

4 Apologies for absence

5 Minutes of the meeting held on the 17 March 2011

(Pages 1 - 4)

6 Urgent Business

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

7 Declarations of Interest

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

- 8 **Localism Bill for the Ethical Framework in Ryedale** (Pages 5 - 22)
- 9 **External Audit: Assessment of Compliance with Code of Conduct** (Pages 23 - 28)
- 10 **Application for Dispensation**
- 11 **Any other business that the Chairman decides is urgent.**

Standards Committee

held at Council Chamber, Ryedale House, Malton
on Thursday 17 March 2011

Present

Councillors Mrs De Wend Fenton, Maud and Spencer

By Invitation – Councillors Acomb & Ms Warriner.

Mrs G Baker	Independent Member of the Standards Committee
Mr Ian Hamilton	Chairman of the Standards Committee
Mr C Langley	Independent Member of the Standards Committee
Mrs G De Barr	Parish Member of the Standards Committee
Mr P Lerew	Parish Representative on the Standards Committee

In Attendance

Anthony Winship and Susan Shuttleworth

Minutes

28 Apologies for Absence

Apologies for absence were received from Councillors Clark, Cottam and Cussons

29 Minutes of the Meeting held on the 20th January 2011

The minutes of the last meeting of the Standards Committee held on 20 January 2011 (previously circulated) were presented.

Resolved

That the minutes of a meeting of the Standards Committee held on 20 January 2011 be approved and signed by the Chairman as a correct record.

30 Urgent Business

The Chairman reported that there were no items of urgent business to be dealt with as a matter of urgency by virtue of Section 100B(4)(b) of the local Government Act 1972.

31 Declarations of Interest

No declarations of interest were received.

32 Maintaining High Standards in Local Government

The Council Solicitor & Monitoring Officer submitted a report (previously circulated) informing Members of a short and valuable guide for Local Authorities on maintaining high ethical standards in Local Government against the background of the proposals to abolish the ethical Standards regime in the Localism Bill.

In the wake of plans in the Localism Bill to dismantle the current local government standards regime, the Local Government Association (LGA) in association with the Association of Council Secretaries and Solicitors (ACSeS) had issued a short and valuable guide for authorities: Maintaining High Ethical Standards in Local Government (the Guide). A copy of the Guide was appended to the report. In addition to summarising the Bill's standards regime proposals, the Guide outlined the conduct controls which exist in addition to it.

The report was discussed in some detail and the view was expressed that it should be included in the induction pack for all Members following the Local Government elections in May. Furthermore it was also considered that the document could be considered as a useful basis for the drafting of any future new code of conduct bringing together in one document all the legal obligations relating to Councillors including fiduciary responsibilities and pre-determination which have not previously been brought together in one concise and comprehensive guide for Councillors. It was also recommended that it be brought to the attention of parish and town councils and it was agreed that the Guide, together with a short summary, be considered for inclusion on the agenda for the next Parish Liaison Meeting.

Resolved

That the report and the Guide attached thereto be noted.

33 Implications of the Localism Bill for the Ethical Framework in Ryedale

The Council Solicitor & Monitoring Officer submitted a report (previously circulated) summarising the contents of the Localism Bill which had been presented to Parliament on 13 December 2010 and seeking feedback from Members on the questions posed. The localism Bill contained several clauses which affected Ryedale District Council, but the report now submitted concentrated on those which affected the standards regime.

It was necessary for a final decision to be made in advance of February 2012 and It was proposed that Group Leaders and members of the Standards Committee be consulted on the available options before the Standards Committee made a recommendation to Full Council.

In order that the possibility of regional arrangements could be explored, it was proposed that all the North Yorkshire Councils should receive the briefing note attached to the report and would be asked to provide feedback on the questions listed therein. This would assist officers in establishing whether there was an appetite for regional arrangements and whether it would be possible to reach agreement on what those arrangements might be.

Members were asked to:

- Consider the implications of the Localism Bill as they relate to the Council's ethical governance arrangements; and
- Consider the contents of a submission to the Public Bill Committee on the Localism Bill by the Association of Council Secretaries and Solicitors published in March 2011
- Consider and endorse the proposed actions contained in the report
- Consider and comment upon the questions listed in paragraph 7.12 of the report.

The Association of Council Secretaries and Solicitors had recently made a submission to the Public Bill Committee on the Localism Bill and a copy of the submission was appended to the report.

The report was discussed in detail and Members were firmly of the opinion that a voluntary Code of Conduct should be adopted, with the starting point being the existing code. It was also considered essential that effective procedures be put in place to ensure that parish and town councils adopted a Code of Conduct.

On the question of whether there should be different processes for dealing with differing types of complaint, it was considered that there was a need for wider consultation to take place. It was also considered that it would be helpful to have details of the number and type of complaints that had been received and it was agreed that this information be submitted to the next meeting of the Committee.

It was generally agreed that there was a need for a separate Standards Committee, although the possibility of the introduction of a Regional Committee was not ruled out.

Resolved

That a decision on the questions raised in the report be deferred for further detailed consideration at the next meeting of the Committee.

34 **Local Elections May 2011 - Formalities and Member Training**

The Council Solicitor & Monitoring Officer submitted a report (previously circulated) in which Members were informed of the proposed arrangements for completing various formalities and the provision of member training in the run up to and after the local elections in May 2011.

Members were of the opinion that there should be at least two training sessions, one of which should be in the evening.

Resolved

That the report be noted.

35 **Council Resolution for Information**

Members were advised that Minute 24 (Blogging and Social Networking) and Minute 26 (Independent/Parish Members) of the last meeting of the Committee had been adopted at a meeting of the Council held on 10 March 2011.

36 **Any other business that the Chairman decides is urgent.**

There being no items of urgent business the meeting closed at 7.40pm.

The Meeting commenced at 6.30 pm and ended at 7.40 pm



REPORT TO: STANDARDS COMMITTEE

DATE: 9 JUNE 2011

REPORT OF THE: COUNCIL SOLICITOR AND MONITORING OFFICER
ANTHONY WINSHIP

TITLE OF REPORT: IMPLICATIONS OF THE LOCALISM BILL FOR THE
ETHICAL FRAMEWORK IN RYEDALE

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 At its meeting on 17 March 2011, the Standards Committee considered a report, 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.
- 1.2 The purpose of this report is to summarise the contents of the Localism Bill which was presented to Parliament on 13 December 2010, and to seek feedback from Members of the Committee on the questions posed in this report. The Localism Bill contains several clauses which affect Ryedale District Council, but this report concentrates on those which affect the standards regime.
- 1.3 It is proposed that the following Members will be consulted on the options available; the Group Leaders and Members of the Standards Committee before the Standards Committee makes a recommendation to Full Council for it to make a final decision. The final decision will need to be made in advance of February 2012.
- 1.4 In order that the possibility of regional arrangements can be explored it is proposed that all the North Yorkshire Councils should receive the briefing note attached as **Annex 1**, and will be asked to provide feedback on the questions listed on the first page. This will assist officers in establishing whether there is an appetite for regional arrangements, and whether it would be possible to reach agreement on what those arrangements might be.
- 1.5 Members of the Standards Committee are asked to:
- Consider the implications of the Localism Bill as they relate to the Council's ethical governance arrangements and in particular consider the following key questions:-
 - (a) How should Ryedale District Council respond to the proposed new duty to promote high standards of conduct amongst Members?

- (b) Should Ryedale District Council 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 Ryedale District Council 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, ie that it made recommendations only to the County Council.
 - (d) How would Ryedale District Council 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?
- Consider the contents of a submission to the Public Bill Committee on the Localism Bill by the Association of Council Secretaries and Solicitors published in March 2011.
 - Consider and endorse the proposed actions contained in the report
 - Consider and comment upon the questions listed in paragraph 7.12 of this report.

2.0 RECOMMENDATION(S)

2.1 The Standards Committee is asked to:

- Consider the implications of the Localism Bill as they relate to the Council's ethical Governance arrangements; and
- Consider and endorse the proposed actions contained in the report
- Consider and comment upon the questions listed in paragraphs 7.12 of this report

3.0 REASONS FOR RECOMMENDATIONS

3.1 It is important for the Standards Committee to be acquainted with the Government's proposed legislation in relation to standards matters.

3.2 By continually monitoring developments and the implications for Ryedale, the Standards Committee is fulfilling its terms of reference by promoting high standards of conduct and considering future arrangements for promoting high standards of conduct in the public interest.

4.0 SIGNIFICANT RISKS

4.1 No significant risks have been identified in preparing this report – see Risk Matrix (Annex A)

REPORT

5.0 BACKGROUND AND INTRODUCTION

5.1 The Government set out its intention to abolish the ‘Standards Board Regime’ in the coalition agreement published in May 2010. It is the Government’s intention to effect the abolition through the Localism Bill which had its first reading in Parliament on 13 December 2010.

6.0 POLICY CONTEXT

6.1 Consideration of the Government’s proposals in relation to the standards regime contributes positively to the Council’s Corporate Governance arrangements by ensuring that Members are kept up to date with standards issues and proposals for the Code of Conduct.

7.0 REPORT DETAILS

7.1 The Localism Bill proposes to abolish the current standards regime established by the Local Government Act 2000. In summary, this will have the following consequences:-

- The Members’ Code of Conduct and the General Principles of Public Life will be revoked
- The requirement for the Council to have a Standards Committee will be abolished
- Standards for England (formerly known as the Standards Board for England) will be abolished, as will all its functions
- The first-tier Tribunal (Local Government Standards in England) (formerly known as the Adjudication Panel for England), which dealt with the most serious cases and heard appeals against Standards Committee decisions, will lose its jurisdiction over the conduct of Councils.

Duty to Promote and Maintain High Standards of Conduct

7.2 When enacted the Localism Bill will impose a new duty on Councils to promote and maintain high standards of conduct by Members and Co-opted Members of the authority. There are no further details available at the current time regarding how this duty is to be fulfilled or what it will entail.

Voluntary Codes of Conduct

- 7.3 The Localism Bill also contains provisions to allow Councils to adopt a Code of Conduct to apply to Councillors and Co-opted Members whilst they are acting in that capacity. The Council could choose to:-
- (a) Revise the existing Code of Conduct;
 - (b) Adopt a Code of Conduct to replace the existing Code of Conduct; or
 - (c) Withdraw its existing Code of Conduct without replacing it.
- 7.4 If a Council chose to continue to have a Code of Conduct in place then it must receive and consider complaints about potential misconduct. If, having received a complaint, a Council considered that investigation was appropriate, the Council must investigate the allegation in such a manner as it thinks fit.
- 7.5 If, as a result of the investigation or otherwise, a Council found that a Member or Co-opted Member had failed to comply with their adopted Code of Conduct, that Council must decide whether to take action and what action to take.

Local Standards Committee

- 7.6 The Localism Bill specifies that the above functions of considering, investigating and taking action in relation to complaints, must be carried out by Full Council, a Council Committee, or an officer acting under delegated powers. It would also be possible to create a joint Standards Committee¹ for the North Yorkshire authorities.

Disclosure and Registration of Members' Interests

- 7.7 The Localism Bill proposes to make regulations which will require the Monitoring Officer to establish and maintain a register of Members' interests. These regulations will also explain when Members will have to declare their interests in meetings, when these interests will prevent them from taking part in decision making, and will make provisions for the Council to grant dispensations to Members in some circumstances.
- 7.8 The Localism Bill also makes it an offence to fail to comply with the obligations in the regulations. The penalty that the Magistrates Court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a Member of a relevant authority for up to five years.

Consultation on possible Local Standards Arrangements

- 7.9 The Localism Bill is still in its early stages of development and may be amended significantly before reaching its final form and receiving Royal Assent (anticipated in November or December 2011). However, it is necessary for Members to consider the implications of the Bill now in order that, should Members' view be that Ryedale District Council should adopt a local Code of Conduct, work can commence on drafting the Code and the mechanisms that might be needed to support it in time for consultation and agreement by Full Council.
- 7.10 The Government has already announced transitional arrangements to be put in place

¹ This would not have the statutory functions or Membership requirements of current Standards Committees as these legislative requirements are abolished by the Localism Bill.

between the Bill receiving Royal Assent and the 'Appointed Day' when the Act comes into force. Any local arrangements would, therefore, start after the 'Appointed Day'.

7.11 In the first instance, the Council Solicitor proposes seeking views on the implications of the Bill from Group Leaders, the Standards Committee and any other consultee the Standards Committee suggests.

7.12 The themes on which initial views are being sought are as follows

1. Are we going to adopt a voluntary Code of Conduct?
 - a. If yes, should the Council:
 - Revise the existing Code of Conduct²
 - Adopt a completely new Code of Conduct to be drafted locally?
 - b. If the Council wishes to adopt a completely new Code of Conduct, what types of behaviour/situations should this cover?
2. If a Code is to be introduced, should there be different processes for dealing with differing types of complaints, namely:
 - Member against Member;
 - Officer against Member; and
 - Member of the public against Member?
 - a. If yes, how should these processes differ?
3. Should the Council have a separate 'Standards Committee' (or another name) to carry out any of the above functions, or instead give the function to an existing Committee exercising Council functions?
 - a. If an existing Committee is preferred, which Committee would be the most appropriate?
 - b. Alternatively, would the Council prefer to delegate some of these functions to an officer?
4. Would there be any value in retaining the facility to have a Co-opted Independent Member(s)³ on any Committee dealing with complaints of Member misconduct and if so, might those Co-opted Members have a role in chairing consideration of complaints against Members under any of the options shown in Question 2 above? 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, ie that it made recommendations only to the District Council.
5. Is there an appetite for having a regional Standards Committee?

² At the least the Council would need to remove the reference to the General Principles which will be revoked, and the requirements regarding the registration and declaration of interests as these will be covered in separate Regulations.

³ The position of Independent Member as it currently stands will be abolished, but the Council could choose to co-opt someone onto the Committee to fulfil a similar function.

- 7.13 Standards Committee's views are sought on these question areas.
- 7.14 From the initial discussions and soundings which are taking place it is anticipated that a further detailed options paper will be drawn up for further discussion with Political Groups.
- 7.15 Members may also wish to approve steps to be taken so that the possibility of regional arrangements can be explored with all the North Yorkshire Councils by means of sending the attached note (Annex 1), with a request to provide feedback on the questions. This will be of assistance in establishing whether there is an appetite for regional arrangements, and whether reaching agreement on what those arrangements might be would be practical.

8.0 IMPLICATIONS

- 8.1 As stated earlier, the proposals in the Localism Bill have consequences for the Council's Governance arrangements, including the Code of Corporate Governance. Members will also need to consider what impact a local code would have on the local codes and protocols already in existence (in Part 5 of the Constitution), such as the Protocol for Member Officer Relations.
- 8.2 The Association of Council Secretaries and Solicitors (ACSeS) has recently made a submission to the Public Bill Committee on the Localism Bill. A copy of the submission is attached at **Annex 2**.
- 8.3 The following implications have been identified:

a) Financial

No longer being required to have a Standards Committee, which must be chaired by an Independent Member and have Parish Members, will represent a saving to the Council in terms of Special Responsibility Allowances. However a failure to have arrangements for promoting high standards of conduct may give rise to unquantified costs.

b) Legal

The legal implications of the Localism Bill (as they relate to the Council's ethical Governance arrangements) are set out in the report.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

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Background Papers:

Localism Bill published on 13 December 2010.

Submission to the Public Bill Committee on the Localism Bill by the Association of Council Secretaries and Solicitors – March 2011.

Background Papers are available for inspection at:

Ryedale District Council Offices.

IMPLICATIONS OF THE LOCALISM BILL FOR THE ETHICAL FRAMEWORK IN RYEDALE - ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
The Committee fails to have due regard to new developments.	The risk over time of the breakdown of standards with consequential effects upon the reputation of an authority.	2	B	There is no mitigation in this case.	2	B

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Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

ANNEX A

Localism Bill – Options Paper for the Future Ethical Framework

Questions to be Addressed

Please see paragraphs 2.3 to 2.10 of the background information for more details about the proposals contained in the Localism Bill and the options available to the Council.

1. Are we going to adopt a voluntary Code of Conduct?
 - a. If yes, should the Council:
 - Revise the existing Code of Conduct⁴; or
 - Adopt a completely new Code of Conduct to be drafted locally?
 - b. If the Council wishes to adopt a completely new Code of Conduct, what types of behaviour/situations should this cover?
2. If a Code is to be introduced, should there be different processes for dealing with differing types of complaints, namely:
 - Member against Member;
 - Officer against Member; and
 - Member of the public against Member?
 - a. If yes, how should these processes differ?
3. Should the Council have a separate 'Standards Committee' (or another name) to carry out any of the above functions, or instead give the function to an existing Committee exercising Council functions?
 - a. If an existing Committee is preferred, which Committee would be the most appropriate?
 - b. Alternatively, would the Council prefer to delegate some of these functions to an officer?
4. Would there be any value in retaining the facility to have a Co-opted Independent Member(s)⁵ on any Committee dealing with complaints of Member misconduct and if so, might those Co-opted Members have a role in chairing consideration of complaints against Members under any of the options shown in Question 2 above?
5. Is there an appetite for having a regional Standards Committee?

⁴ At the least the Council would need to remove the reference to the General Principles which will be revoked, and the requirements regarding the registration and declaration of interests as these will be covered in separate Regulations.

⁵ The position of Independent Member as it currently stands will be abolished, but the Council could choose to co-opt someone onto the Committee to fulfil a similar function.

Background Information

1.0 Consequences of the Bill for the Existing Ethical Framework

- 1.1 Schedule 4 of the Localism Bill repeals Part III of the Local Government Act 2000 in relation to local authorities in England. This means the abolition of Standards for England, Standards Committees, and the jurisdiction of the First-Tier Tribunal (Local Government Standards in England). The Model Code of Conduct and the general principles of public life will be repealed, and the power for the Secretary of State to issue a Model Code of Conduct and to specify general principles is removed altogether. There will be no requirement for Councils to have a Standards Committee in future and the position of Independent Member is also abolished.
- 1.2 All the provisions which relate to local assessment and review, and the powers of Monitoring Officers in relation to investigations are also repealed.
- 1.3 Finally, there will be no requirement for each Member to formally agree to abide by the Code of Conduct through their acceptance of office, and any declaration previously made will cease to apply when the Code of Conduct is abolished. Currently, failure to complete such a declaration within two months of their election means that a Member loses their position on the Council.

2.0 Future Standards Regime – Proposals contained in the Bill

- 2.1 For the purposes of Chapter 5 of the Bill (which contains all the provisions about standards), a Parish or Town Council is included in the definition of a 'relevant authority'. This means that instead of the Council being responsible for the Parish and Town Councils in its area, these Councils must make their own arrangements. This will include adopting their own voluntary Code of Conduct (if they choose to do so), and considering and investigating written allegations of misconduct (if applicable).

Duty to Promote and Maintain High Standards of Conduct

- 2.2 The Localism Bill imposes a new duty on local authorities to promote and maintain high standards of conduct by Members and Co-opted Members of the authority. There are no further details regarding how this duty is to be fulfilled or what it will entail.

Voluntary Codes of Conduct

- 2.3 The Localism Bill allows local authorities to adopt a Code of Conduct to apply to Councillors and Co-opted Members whilst they are acting in that capacity. The Council can choose to:
- (a) Revise the existing Code of Conduct;
 - (b) Adopt a Code of Conduct to replace the existing Code of Conduct; or
 - (c) Withdraw its existing Code of Conduct without replacing it.
- 2.4 The Council may publicise its adoption, revision or withdrawal of a Code of Conduct in whatever manner it considers appropriate.

- 2.5 If the Council does choose to continue to have a Code of Conduct in place, either by amending or replacing the existing one, then it must consider whether to investigate written allegations that a Member or Co-opted Member has failed or may have failed to comply with its Code of Conduct. If the Council decides that investigation is appropriate, it must investigate the allegation in such a manner as it thinks fit.
- 2.6 It is worth noting that during such an investigation Members would not be able to rely on the Local Authorities (Indemnities for Members and Officers) Order 2004 in order to provide insurance payments towards the cost of legal fees in their defence. This is because this Order specifies that Members can be indemnified against them in accordance with Part III of the Local Government Act 2000, but this will be repealed.
- 2.7 If, as a result of the investigation or otherwise, the Council finds that a Member or Co-opted Member has failed to comply with the Code of Conduct, it may have regard to the failure in deciding:
- (a) Whether to take action in relation to the Member or Co-opted Member; and
 - (b) What action to take
- 2.8 There are no further details of what actions may be appropriate, although it is clear there will be no powers to suspend, partially suspend or disqualify a Member. The judgement of the Court of Appeal in *R v Broadland District Council ex p Lashley (2000)* confirmed the right of an authority to take administrative measures to ensure that it could continue to discharge its functions effectively, in that case by the Chief Executive barring a Councillor from the offices and from direct contact with individual officers. However, it is not a power to punish, and cannot be exercised in a manner which prevents a Councillor acting as a Councillor.
- 2.9 The Localism Bill specifies that the above functions of considering, investigating and taking action in relation to complaints, must be carried out by Full Council, a Council Committee, or an officer acting under delegated powers.
- 2.10 The Local Government Act 1972 s101 allows two or more Councils to set up a *Joint Committee* to carry out their functions. It would, therefore, be possible to create a Joint Standards Committee⁶ for the North Yorkshire authorities. This would require the Councils reaching agreement over the content of a voluntary Code of Conduct, the terms of reference, and the composition of the Standards Committee.
- 2.11 Section 17 of the Bill allows the Secretary of State to make regulations which will require the Monitoring Officer of a relevant authority (or other specified officer in relation to Parish or Town Councils) to establish and maintain a register of interests of the Members and Co-opted Members of the authority.
- 2.12 The regulations may:
- Specify the financial and other interests that are to be included in the register;
 - Require any Member or Co-opted Member who has an interest of a specified kind to disclose that interest before taking part in business of the authority relating to the interest;
 - Prevent or restrict the participation of a Member or Co-opted Member in any business of the authority to which their interest relates;

⁶ This would not have the statutory functions or membership requirements of current Standards Committees as these legislative requirements are abolished by the Localism Bill.

- Make provisions for the Council to grant dispensations in specified circumstances;
- Make provisions about the sanctions that a relevant authority may impose of a Member or Co-opted Member for failure to comply with regulations under this section⁷, and
- Require a relevant authority to make copies of the register available to the public and to inform the public that copies are available.

2.13 The sanctions to be specified within the regulations will not include suspension, partial suspension or disqualification.

Offence of Breaching the Regulations under Section 17

2.14 The Localism Bill makes it an offence to fail, without reasonable excuse, to comply with obligations in the regulations referred to above. The penalty that the Magistrates Court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a Member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the Crown Prosecution Service having the evidence to warrant prosecution, but no proceedings may be brought more than three years after the offence or the last date on which an offence was committed.

3.0 Predetermination

3.1 Chapter 4 of the Bill clarifies the existing position regarding predisposition, bias and predetermination. According to common law, predetermination occurs when someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. Councillors who have participated in decision making whilst have a predetermined view have caused the decision to be judged unsafe and to be quashed.

3.2 The Localism Bill clarifies that if a Councillor has given a view on an issue, this does not show that the Councillor has a closed mind on that issue, so that if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in the discussion of that issue in the Council and to vote on it if it arises as an item of Council business requiring a decision. The effect of this provision is that campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an accusation that the Member has a closed mind.

3.3 However, 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 (eg by making statements such as “over my dead body...”). Therefore, this clarification would not change the Council’s current approach to these matters.

3.4 Although bias and predetermination are not part of the current Code of Conduct regime, Standards for England have advised that a Councillor who chooses to take part in a decision when they are biased may bring their office or authority into disrepute.

⁷ This implied that the Council will also have jurisdiction over breaches of the Regulations, but it is unclear how this will work in practice as the Bill makes such breaches a criminal offence.

4.0 **Recall of Elected Representatives**

- 4.1 Under the Recall of Elected Representatives Bill it is proposed that Elected Mayors and Parish Councillors will also be subject to electoral recall⁸. This provides that if 10% or more of the registered voters in the constituency of an elected representative sign a relevant recall petition then a recall election must be held within 4 months.
- 4.2 In order for a recall petition to be relevant the appropriate Returning Officer must be satisfied that there is evidence⁹ in the petition that the elected representative has:
- Acted in a way which is financially dishonest or disreputable;
 - Intentionally misled the body to which he or she was elected;
 - Broken any promises made by him or her in an election address;
 - Behaved in a way that is likely to bring his or her office into disrepute; or
 - Loss of confidence of his or her electorate.
- 4.3 If the recall election result is negative for the Member concerned, a by-election must be held within the following three months, although the recalled Member may stand as a candidate in this election.

⁸ This Bill as drafted also applies to MPs and MEPs, but not to Local Authority Councillors. It is unclear why this is the case, and possible that this may change. This Bill is due to have its second reading on 10 June 2011, so further details may be available after this date.

⁹ It is unclear how the petitioners will be able to obtain such evidence (ie will the Council have any powers to investigate on their behalf?). It is also unclear how much evidence will be required in order to satisfy the Returning Officer.

Association of Council Secretaries and Solicitors

From the President's Office

1 March 2011



Association of Council Secretaries and Solicitors

ACSeS submission to the Public Bill Committee on the Localism Bill

March 2011

Introduction

ACSeS represents chief legal officers and many heads of democratic or governance services in local government. We are a non party political organisation. We have been at the front line of facilitating the governance regime and operating the standards regime under the Local Government Act 2000, and have specific responsibilities for corporate and ethical governance. This submission relates to the corporate governance provisions in the Bill (in particular chapters 1 and 2 and Schedule 2) and to the ethical governance provisions in the Bill (Part 1, Chapter 4 and 5).

Extract

Standards regime

ACSeS welcomes the Bill's objective of streamlining the standards regime while maintaining high ethical standards. But we have concerns that the Bill as drafted risks creating new inconsistencies and problems in dealing with standards issues while leaving gaps in coverage which may undermine the objective of maintaining those standards.

Code of conduct

The current code of conduct covers both general matters of behaviour and the provisions on interests. The Bill appears to attempt to split these two, although the

provisions on the voluntary code do not provide that the voluntary code can no longer cover interests. Equally, the limitation on sanctions that an authority can impose appears in relation to the regulations on interests, and not in the provisions on the code. The only rules on the sanctions are set out in clause 16(4), which provide for an authority to decide “what action to take “. If the government’s intentions are that the voluntary code should not cover interests, and should not allow for suspension or disqualification, the Bill appears to need correction to achieve what it intends.

ACSeS would however note that making the adoption of a code of conduct voluntary rather than mandatory risks undermining the high ethical standards which the Bill appears to be aiming at with the clause 15 duty. It follows from the lack of a national code that there will be no common understanding of the standards that should apply to councillors and no ability to enforce standards if an authority chooses to have no code. In some cases this appears to undermine the government’s own objectives. For example, one of the ways in which the publicity code (which prevents the use of council resources for political purposes, among other things) is enforced is through the code of conduct provisions requiring members to ensure they use the authority’s resources for proper purposes only, having regard to the publicity code. The government’s ability to enforce its own changes to the publicity code are therefore being undermined by the lack of a national code in this Bill.

ACSeS would therefore support the maintenance of the requirement for local authorities to adopt a code.

Criminalising councillors

Clauses 17 and 18 of the Bill proposes that that part of the code which dealt with interests should be replaced by regulations relating to interests which are enforced through the criminal process. The detail will be left to regulations, but these provisions raise a number of issues.

The most serious relates to the proportionality of criminalising councillors in this way. The potential offence under clause 18(1)(a) would be made out if a councillor merely failed to register any type of interest without a reasonable excuse. In our experience, it is relatively common for councillors to make mistakes in relation to their declarations. It seems excessive to make such conduct a criminal offence. In practice, this would no doubt be dealt with by a prosecution policy that effectively ignored such offences, but it would be unfortunate to create an excessively strict regime that had to be dealt with by prosecutorial discretion.

ACSeS also has concerns as to whether the local police will have the resources to deal with the more serious cases which would be caught by the regulations, and to do so in a timely manner. It would be unfortunate if serious irregularities were left untouched, and equally unfortunate if the publicity attendant on any such case ruined the career and reputation of an innocent party because of the length of time that criminal cases can take to resolve.

On a more technical level, clause 17(2)(e) appears to imply that some parallel power for the authority to sanction members who breach the rules on interests will be maintained. It is not at all clear how the two enforcement routes would fit together, nor indeed who within the local authority would be responsible for the clause 17(2)(e) sanctions if the authority had chosen not to have a standards committee or a code, and therefore had no infrastructure for dealing with these issues.

Disqualification

One of the most difficult aspects of the current code of conduct was its limitation to official capacity. This has left a significant area of potential misconduct outside the scope of the code. Under the current code, it is possible for councillors to be disqualified for any serious breach of any of the provisions of the code. Under the Bill's proposals, it is not clear whether it would be possible for an authority to disqualify for a breach of its own code, but if a councillor was convicted of an offence under clause 18, it would be possible for them to be disqualified by the court.

At the same time, section 80 of the Local Government Act 1972 also covers certain conduct issues which lead to disqualification, as follows:

Subsection (1)(b) "is the subject of a bankruptcy restrictions order or an interim order"

Subsection (1)(d) "has within five years before the day of election or since his election been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine".

The combined effect of the new provisions of the Bill and the current section 80 provisions creates an odd patchwork which does not appear to match current public expectations of the behaviour of elected members.

As an illustration, take four hypothetically badly behaved councillors. Councillor A has persistently racially abused members of the public and officers. Councillor B declared a prejudicial interest in a planning application but then sat in the public gallery to watch the committee procedure. Councillor C committed housing benefit fraud and was sentenced to community service. Councillor D, on holiday in France, drank far too much and caused a car accident in which a family was injured, for which he was convicted and sentenced to 5 months in jail. Under the current law and the proposals in the Bill, only Councillor B would potentially be liable to be disqualified.

ACSeS would question whether the balance in the government's proposals on this issue would fit the public expectation of the behaviour of elected members.

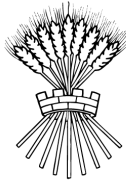
ACSeS hopes these concerns will be taken into account by the Committee in its consideration of the Localism Bill.

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REPORT TO:	STANDARDS COMMITTEE
DATE:	9 JUNE 2011
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP
TITLE OF REPORT:	EXTERNAL AUDIT: ASSESSMENT OF COMPLIANCE WITH CODE OF CONDUCT
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider the External Audit Requirements for Assessment of Compliance with the Code of Conduct.

2.0 RECOMMENDATION(S)

- 2.1 That the report be noted and the External Auditor be informed of the assessment of the Standards Committee for Ryedale District that for the period 1 April 2010 to 31 March 2011 the Code of Conduct was being complied with by Members of Ryedale District Council.

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 This report is evidence that the Standards Committee monitors compliance with the Members' Code of Conduct and is an important element in the external auditor's assessment of the ethical framework and culture of the Council.
- 3.2 The decision of the Standards Committee is necessary because it will be considered as part of the external auditor's assessment of the Council's performance.

4.0 SIGNIFICANT RISKS

- 4.1 No significant risks have been identified. See Risk Matrix (**Annex A**).

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 As part of the External Auditor's Use of Resources Assessment, the Council is required to undertake an assessment of standards of conduct, including how

effectively Members are complying with the Code of Conduct, the numbers and types of complaints received and review any action required as appropriate.

6.0 POLICY CONTEXT

6.1 Sound corporate governance lies at the heart of the Council's ability to deliver and achieve its corporate priorities. The assessment to be considered and made in this report will assist the Standards Committee to carry out its role in promoting high standards of conduct in Council decision making and support the Council's Corporate Plan objectives. The work of the Standards Committee is set out in the Committee's terms of reference, in the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007.

7.0 REPORT DETAILS

7.1 In the period 1 April 2010 to 31 March 2011 there have been five written allegations of misconduct. One complaint related to a District Councillor and four complaints related to Parish Councillors. Details of these complaints are included in the attached **Annex 1**. Of those five cases, all but two cases resulted in no further action. The exceptions which related to Parish Councillors were referred for investigation. The two Parish Councillors subsequently retired and accordingly the investigations was terminated. It was considered that no useful purpose would be served in continuing the investigations in the circumstances.

7.2 Accordingly the final outcome of all these complaints was that no further action be taken. Given that there have been no decisions to investigate there is no recommendation for specific training or a change in procedures resulting from those non referral decisions.

7.3 To date there have been no referral of complaints for investigation as disclosing a potential breach of the Members' Code of Conduct which have resulted in an Investigator's report and there is no evidence that Members of the Council are not complying with the requirements of the Code of Conduct.

7.4 In terms of training, arrangements are being made to employ Mr Colin Crawford of Counsel at Kings Chambers, Manchester to make a presentation on the subject of the Role and Responsibilities of Members and Officers. Training on decision making and the constitution has been provided by the Monitoring Officer for all Members of Council on 11 May 2011 as part of the Member induction programme.

7.5 Members of all political groups regularly consult me in my capacity as the Monitoring Officer on issues concerning declarations of interests. Monitoring Officer advice is often confirmed in writing for the sake of clarity. It is my perception that Members of Ryedale District Council take care to ensure that they comply with the Members' Code of Conduct and show a willingness to discuss declaration of interest issues prior to Council and Committee meetings.

7.6 The last CAA (Comprehensive Area Assessment) Use of Resources/Key Lines of Enquiry rating for Ryedale District Council as determined by the Council's external auditors shows that the Council performs well in the following areas:-

- Adopting, promoting and demonstrating the principles of good governance
- Maintaining its focus on its purpose and vision
- Demonstrating a strong ethical framework and culture
- The external auditors recognised that the Standards Committee is operating

effectively and is proactive in providing advice to Members

In terms of area for improvement, the Council needs to improve how it applies the principles and values of good governance to its partnership working. Improvements have already been made with the development of a Partnership Toolkit which outlines the approaches to be applied when considering the introduction of new partnerships and reviewing existing partnership arrangements.

7.7 Finally, Members regularly update the Register of Financial and other Interests and the Register of Gifts.

8.0 IMPLICATIONS

8.1 The following implications have been identified:

a) Financial

This report has no financial implications

b) Legal

There is no legal obligation for the Committee to prepare an annual report although this is considered good practice.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

The report has no other immediately apparent implications.

9.0 NEXT STEPS

9.1 The assessment made by the Standards Committee will be duly referred to the Council's external auditors.

10.0 CONCLUSION

10.1 Against this background it is considered that Members of the Standards Committee have a sufficient evidential basis to conclude that the Code of Conduct is being complied with by Members.

Anthony Winship
Council Solicitor and Monitoring Officer

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Background Papers:
None

<p style="text-align: center;">SUMMARY OF ALLEGATIONS OF MISCONDUCT REFERRED TO STANDARDS INITIAL ASSESSMENT SUB-COMMITTEE 1 APRIL 2010 – 31 MARCH 2011</p>						
REFERENCE	DATE RECEIVED	STATUS OF MEMBER COMPLAINED ABOUT	STATUS OF COMPLAINANT	CODE PROVISION CONSIDERED	DATE OF ASSESSMENT REVIEW	OUTCOME AND POINTS OF NOTE
MON/10/005	30/10/2010	Parish Councillor	Member of public	(i) 3 (1) - Failure to treat others with respect (ii) 5 - Bringing office or authority into disrepute (iii) Preventing access to information	17 March 2011	Refer for investigation. Investigation discontinued because of resignation of Parish Councillor on 9 May 2011
MON/10/006	03/11/2010	District Councillor	Town Councillor and District Councillor	(i) 9 (1) - Alleged failure to declare an interest (ii) 12 - Withdraw from meeting	5 January 2011	No investigation

**SUMMARY OF ALLEGATIONS OF MISCONDUCT
REFERRED TO STANDARDS INITIAL ASSESSMENT SUB-COMMITTEE
1 APRIL 2010 – 31 MARCH 2011**

REFERENCE	DATE RECEIVED	STATUS OF MEMBER COMPLAINED ABOUT	STATUS OF COMPLAINANT	CODE PROVISION CONSIDERED	DATE OF ASSESSMENT REVIEW	OUTCOME AND POINTS OF NOTE
MON/11/001	22/01/2011	Parish Chairman	Member of public	(i) 5 - Bringing office or authority into disrepute	14 February 2011	No investigation
MON/11/001	22/01/2011	Parish Councillor	Member of public	(i) 3 (1) - Treat others with respect (ii) 5 - Bringing office or authority into disrepute	17 March 2011	Refer to investigation. Investigation continued because of resignation of Parish Councillor on 9 May 2011
MON/11/002	7 January 2011	Parish Councillor	Member of Public	(i) 5 - Bringing office or authority into disrepute	17 March 2011	No investigation

EXTERNAL AUDIT: ASSESSMENT OF COMPLIANCE WITH CODE OF CONDUCT RISK MATRIX – ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Failure to monitor compliance with the Members' Code of Conduct and take appropriate actions	Increased numbers of written complaints alleging a breach of the Members' Code of Conduct by Councillors	2	B	Continue to monitor and take appropriate action where necessary	1	B

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster