

Standards Committee

Localism Act 2011 – The New Standards Regime

7 March 2012

Report of Head of Law and Governance/Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to receive a summary of the provisions of the Localism Act 2011 in so far as they affect the standards regime, consider a number of issues with a view to formulating appropriate future recommendations to the May Council meeting and to agree to receive a further report at a future meeting when both a model code of conduct and details of the proposed legislation on Disclosable Pecuniary Interests are known in order to formulate a set of final recommendations to Council.

This report is public

Recommendations

The Standards Committee is recommended to:

- (1) Consider the summary of the provisions of the Localism Act 2011 (“the Act”) that relate to the new standards regime set out below.
- (2) Consider the specific issues identified and determine a preliminary view of the Committee’s likely future recommendations to Council.
- (3) Agree to receive a further report at a subsequent meeting to consider and formulate a set of full and final recommendations to Council once a model code of conduct and the legislation relating to Disclosable Pecuniary Interests are available.

Executive Summary

Introduction

- 1.1 The Localism Act 2011 (the Act) received Royal Assent on 15 November 2011 and makes major changes to the standards regime which are due to come into effect on 1 July 2012. This means that the arrangements to be introduced by this Council will need the formal approval of the May full Council meeting.
- 1.2 It is therefore necessary for the Standards Committee to consider its proposed recommendations to that Council meeting. However as certain aspects of the new regime are not yet clear as explained further below, including the detailed requirements that are to be introduced in relation to the disclosure of pecuniary interests, some potential transitional arrangements in relation to Independent Persons and a promised

Local Government Association model code of conduct, it is suggested that the Committee considers its current position in relation to a number of relevant issues with a view to meeting again between now and the May Council meeting to agree a full and final set of recommendations to Council.

Previous Consideration

- 1.3 At its meeting in March 2011 the Committee considered the contents of the Localism Bill, as it then existed, including what was then intended to be a repeal of the obligation to have a code of conduct at principal authorities and Town/Parish Councils. As Members may be aware that proposed repeal has not emerged in the Act and there will remain a requirement to adopt a code at both levels albeit the contents of the code will be much less prescribed. At that meeting the Committee resolved as follows:-

That Council be advised that the view of Cherwell District Council's Standards Committee is that the Council should adopt a voluntary code of conduct and continue to give limited support to parish councils in its district. However Members believe that the Standards Committee should be abolished and the responsibilities that will remain in light of the Localism Bill proposals be transferred to the Accounts Audit and Risk Committee.

- 1.4 At its meeting in May 2011 full Council resolved as follows:-

That the recommendations agreed by the Standards Committee on the approach Cherwell District Council should take in light of the proposals in the Localism Bill relating to the Standards Board regime, namely that the Standards Committee be abolished and responsibilities transferred to the Accounts Audit and Risk Committee, that a voluntary code of conduct be adopted and limited support continue to be given to the parish councils be noted.

Clearly what has emerged in the Act is substantially different to what was envisaged at that time and it is now necessary for the Committee to reconsider its proposed recommendations in the light of what is now known. The remainder of this report therefore sets out the key details of the amended standards regime and identifies a number of issues upon which the Committee is requested to form a preliminary view prior to agreeing its final recommendations at the next meeting when in possession of the further details referred to at paragraph 1.2 above.

Background Information

Duty to promote and maintain high standards of conduct

- 2.1 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

Relevant Member Body

- 2.2 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it is likely to remain necessary to have a Member Body for these purposes be it a free standing Standards Committee or, as previously recommended, the Accounts, Audit and Risk Committee. The alternative, which is

not recommended given the nature of some of the decisions that would have to be taken, is to delegate full authority to the Monitoring Officer perhaps in consultation with an informal Working Group of Members. Whatever its form (and for the purposes of this report and for ease of reference the Member Body will be termed the Standards Committee) it will, other than in the Working Group scenario, be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

- 2.2.1 The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply;
- 2.2.2 The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The Government has, however, recently indicated that they intend to “make transitional provision for a council to appoint a person as an independent person who although not a chairman or member of a standards committee at the time of appointment or thereafter, has held such a post within the last five years”. Further detail on this is awaited. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee;
- 2.2.3 The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

Issue 1 – Nature and Composition of Member Body

The Committee is recommended to consider formulating a preliminary view on the following and to finalise its recommendations at the next meeting:-

- **Should Standards Committee be a free standing body, or part of the Accounts Audit and Risk Committee, or a Joint Committee with Parish Council members, or an informal Working Group of Members with full delegation to the Monitoring Officer?**
- **How many Members should there be on the body?**
- **Is a mandatory Executive Member required?**

- **If the Joint Committee option is not followed, should there be any parish council co-optees (non voting)?**
- **Should Independent Person(s) be invited to attend (save where a conflict of interest exists due to prior involvement with a particular complaint)?**

Code of Conduct

2.4 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations or to cover any other types of interest (be they non-disclosable pecuniary interests or non-pecuniary interests). It should be noted that it is understood that the Local Government Association, in consultation with relevant professional bodies, is producing a model code of conduct for consideration and it is hoped that this will be available in the near future. Accordingly it is recommended that the Committee considers the recommended contents of the new Code of Conduct at its next meeting armed with the necessary further information.

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

So the Council's new Code of Conduct will have to deal with the following matters –

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, the easiest course of action may be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the

Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

- 2.6 Whatever the content of the final code it is clearly desirable to achieve, so far as is practicable, a consistent code at County, District and Parish level so that all Councillors (including those who are twin or triple hatted) are subject to the same provisions. In this regard the Monitoring Officers throughout Oxfordshire have agreed to work together to encourage such a position and the Clerks of all of the Parish Councils in the District have received the letter shown at Appendix 1.

Issue 2 – Content of new Code of Conduct

- **The Committee is recommended to consider this at its next meeting when the proposed LGA model code is available**
- **However in the meantime the Committee is requested to endorse the approach of the Monitoring Officer, in liaison with his Oxfordshire counterparts, to seek to achieve a common code of conduct in the County at all levels of local authority.**

Dealing with Misconduct Complaints

- 2.7 “Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council members and by Parish Council members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.

The advantage is that the Act repeals the requirements for separate Referrals, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

- 2.8 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a quarterly report to Standards Committee, which would enable him to

report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

2.9 "No Breach of Code" finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to Referrals Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him to get an overview of current issues and pressures, and that the Monitoring Officer provides a summary report of each such investigation to Standards Committee for information.

2.10 "Breach of Code" finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (or potentially a Hearings Panel constituted as a Sub-Committee of Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearing Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

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

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

2.11.1 Reporting its findings to Council [*or to the Parish Council*] for information;

2.11.2 Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

2.11.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

- 2.11.4 Instructing the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the member;
- 2.11.5 Removing *[or recommend to the Parish Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- 2.11.6 Withdrawing *[or recommend to the Parish Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 2.11.7 Excluding *[or recommend that the Parish Council exclude]* the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

There is a particular difficulty in respect of Parish Councils, as the Act gives the Standards Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Parish Council.

2.12 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

Issue 3 – Nature of “Arrangements”

It is recommended that the Committee considers the detail of the future arrangements at its next meeting but that in the meantime the broad principles should include the following:-

- **That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;**
- **That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to Standards Committee on the discharge of this function;**
- **Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the**

investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;

- Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- That Council delegate to the Standards Committee (or a Hearings Panel Sub Committee) such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
 - Reporting its findings to Council [*or to the Parish Council*] for information;
 - Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - Instructing the Monitoring Officer to [*or recommending that the Parish Council*] arrange training for the member;
 - Removing [*or recommending to the Parish Council that the member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
 - Withdrawing [*or recommending to the Parish Council that it withdraws*] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - Excluding [*or recommending that the Parish Council exclude*] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Independent Persons

- 2.13 The "arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person.
- 2.14 "Independence"

The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the District Council (not just of those present and voting).

A person is considered not to be “independent” if:-

2.14.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the District Council or of any of the Parish Councils within its area;

2.14.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person subject to the proposed transitional provision referred to in paragraph 2.2.2 above); or

2.14.3 he is a relative or close friend of a current elected or co-opted member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- 2.14.3.1 the candidate’s spouse or civil partner;
- 2.14.3.2 any person with whom the candidate is living as if they are spouses or civil partners;
- 2.14.3.3 the candidate’s grandparent;
- 2.14.3.4 any person who is a lineal descendent of the candidate’s grandparent;
- 2.14.3.5 a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- 2.14.3.6 the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
- 2.14.3.7 any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

2.15 Functions of the Independent Person

The functions of the Independent Person(s) are –

- He must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- He may be consulted by the authority in respect of a standards complaint at any other stage; and
- He may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

2.16 How many Independent Persons?

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

2.17 Remuneration

As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal member of the Committee or Panel (he/she could be co-opted as a non-voting member but cannot chair as the Chair must exercise a second or casting vote). He/she will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

Issue 4 – Appointment of Independent Person(s) and Nature of Role

The Committee is recommended to consider its preliminary view on the following with its final recommendations being determined at its next meeting:-

- **The Monitoring Officer, in consultation with the Head of Transformation and the Head of Finance and Procurement, be authorised to set the initial allowance and expenses for the Independent Person and any Reserve Independent Persons and this function be subsequently delegated to the Standards Committee.**
- **That the Monitoring Officer advertise a vacancy for the appointment of 1 Independent Person and 2 Reserve Independent Persons.**
- **That a Panel comprising 3 current Standards Committee members and the Monitoring Officer be set up to short list and interview candidates and to make a recommendation to Council for appointment.**

- **That, subject to the proposed transitional provision being confirmed, any current independent member of the Standards Committee who resigns that membership by 30 June 2012 be permitted to apply to be the Independent Person or a Reserve Independent Person for such interim period as is permitted.**

Registration of Members' Interests

- 2.18 The Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council offices and on the District Council's website.

At present it is not known what DPI's will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity.

The provisions of the Act in respect of the Code of Conduct also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

- 2.19 Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.

In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially if different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils. However if Parish Councils do agree to adopt a similar code County wide matters will be made simpler, although still challenging.

Issue 5 - Register of Members' Interests

The Committee is recommended at this stage to:-

- **Note the provisions of the Act relating to Members' Interests and the fact that Regulations covering the nature of DPI's is still awaited.**
- **Consider at its next meeting the detailed arrangements that will be required for the necessary register, including the identification of any non-disclosable pecuniary interests and non-pecuniary interests that it is recommended should be registered pursuant to the new code.**

Disclosure of Interests and Withdrawal from Meetings

2.20 As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So –

2.20.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a committee or sub-committee, or of Executive or an Executive committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

2.20.2 Where these conditions are met, the member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the register of members' interests, as registered interests will no longer be disclosed at the meeting.

2.20.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.

2.20.4 If a member has a DPI in any matter, he/she must not –

2.20.4.1 Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or

2.20.4.2 Participate in any vote on the matter,

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

2.20.5 Failure to comply with the requirements (paragraphs 2.20.2, 2.20.3 and 2.20.4) becomes a criminal offence, rather than leading to sanctions.

2.20.6 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply

with these requirements would be a breach of Code of Conduct but not a criminal offence.

2.20.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Executive and Executive Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

Issue 6 – Disclosure of Interests and Withdrawal from Meetings

The Committee is recommended to support the inclusion of a provision in the Council’s Constitution requiring a Member, in the absence of any dispensation being granted otherwise, to withdraw from the meeting when he/she has a DPI on any item of business at a relevant meeting and to include this as part of its final recommendations to Council in due course.

Single Executive Member Decisions

2.21 Matters can be decided by a single member acting alone where the member is an Executive Member acting under Lead Member powers. The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter:-

2.21.1 Unless the DPI is already entered in the register of members’ interests or is subject to a “pending notification”, he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and

2.21.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.

Standing Orders can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.

2.22 Again the Act here effectively removes the rights of a member with what is currently a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct.

Issue 7 – Single Executive Member Decisions and DPI’s

The Committee is recommended to support the Constitutional provision referred to at Issue 6 above extending to requiring, in the absence of any dispensation being granted otherwise, an Executive Member to withdraw from any meeting of the Executive or an Executive Committee where he/she has a DPI in the matter in question and has refrained from taking an individual Member decision because of it.

Sensitive Interests

2.23 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or

on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

Dispensations

- 2.24 The provisions on dispensations are significantly changed by the Act. At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds –
- 2.24.1 That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and
 - 2.24.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).
- 2.25 In future, a dispensation will be able to be granted in the following circumstances:-
- 2.25.1 That so many members of the decision-making body have DPis in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;
 - 2.25.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
 - 2.25.3 That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - 2.25.4 That, without a dispensation, no member of the Executive would be able to participate on this matter; or
 - 2.25.5 That the authority considers that it is otherwise appropriate to grant a dispensation.
- 2.26 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
- 2.27 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 2.25.1 and 2.25.4 are objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring

Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”. Grounds 2.25.2, 2.25.3 and 2.25.5 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

Issue 8 – Determination of Applications for Dispensation

The Committee is recommended to include in its final recommendations to Council that:-

- **the determination of dispensation applications under grounds 2.15.1 and 2.25.4 above are delegated to the Monitoring Officer in consultation with the Independent Person with a right of appeal against refusal to the Standards Committee; and**
- **the determination of applications for dispensation on all other grounds is delegated to the Standards Committee.**

Transitional Arrangements

2.28 Finally Regulations under the Act have provided or will provide for:-

2.28.1. transfer of Standards for England cases to local authorities following the abolition of Standards for England;

2.28.2. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination;

2.28.3. removal of the power of suspension from the start of the transitional period; and

2.28.4. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

Key Issues for Consideration/Reasons for Decision and Options

3.1 The Act will radically transform the Standards regime in both District and Parish Councils with effect from 1 July 2012. Various issues are outlined above and potential alternative options put forward for initial consideration pending a further report to a future meeting of the Committee when it will be asked to formulate a full and final set of recommendations to Council on the arrangements to be implemented pursuant to the Act.

Consultations

None

Implications

Financial

It is not anticipated that the new Standards regime will have a financial impact on the Council that is material different from the current regime. To the extent that there may be fewer investigations to conduct under a new Code of Conduct this will have a beneficial effect on the Council financially.

Comments checked by Karen Curtin, Head of Finance and Procurement

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Legal

Any relevant implications are included in the report.

Comments checked by Kevin Lane, Head of Law and Governance

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Risk Management

There are no direct risk implications arising from the new regime.

Comments checked by Claire Taylor, Corporate Performance Manager

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Document Information

Appendix No	Title
1	Letter to Town and Parish Council, Clerks dated 3 February 2012
Background Papers	
None	
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3 February 2012

Dear Colleague

Localism Act 2011: Standards

This letter is being sent to the Clerks of all Town and Parish Councils in the District, and is intended to provide you with some basic but important information about the Localism Act, and how it will affect Town and Parish Councils/Members in relation to standards (i.e. the code of conduct and the registration and disclosure of interests).

The attachment is based on a briefing note produced by South Oxfordshire and Vale of White Horse District Councils and is intended to provide an overview of the of the main provisions.

As you will see it is likely that the requirement to adopt a new/different code of conduct will be effective from 1 July. It is the intention of the district council to help all town and parish councils with this as best we can, so we hope to be in a position to forward a suggested code for consideration by no later than the beginning of May. This is potentially complicated by the fact that Regulations are awaited. In addition, I have heard a suggestion that the National Association of Local Councils is now considering whether to recommend a code for consideration, although I cannot confirm that at this stage.

However, please rest assured that we will do our utmost to keep you informed and to offer help with the actions which your council will need to take. In particular the monitoring officers of Oxfordshire County Council and the district councils in Oxfordshire hope to recommend the same code to their respective Councils for the benefit of those who operate on more than one council at district and county level. We will therefore be encouraging town and parish councils each to adopt the same code as the district council will still have to play a role in the

consideration of complaints, and it will be much more difficult to do so effectively if councils are all operating different codes.

Finally, to ensure awareness amongst councillors, please can you report this letter to a meeting of your council and/or forward it to your councillors?

Yours sincerely

Kevin Lane
Head of Law and Governance

Briefing for town and parish councils on the Localism Act: standards and interests

The Localism Act received Royal Assent in November 2011, although many of its provisions are not yet in force, and we await secondary legislation to provide further information about the date that the new arrangements will come into place, although 1 July is currently anticipated. We also await more information about how the legislation will work in practice so the following is not an analysis of the Act but a bullet point summary of some of the provisions.

Duty to promote and maintain high standards

Town and parish councils will have a duty to promote and maintain high standards of conduct by elected and co-opted members.

Code of conduct

- The existing code of conduct will cease to have effect
- Town and parish councils **must** adopt a code of conduct. The code must comply with seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and must be approved by the council (not, for example, by a committee of the council)
- The code adopted must allow for the registration of pecuniary and non-pecuniary interests (to be defined in regulations)
- Notwithstanding the above requirements, unlike the current code, there will be no “mandatory provisions” which are legally required to be included in a council’s code of conduct
- Town and parish councils will be able to adopt the code of conduct that the District Council adopts
- Once the code has been adopted, the town or parish council must publicise the adoption

Register of interests

- Councillors must register “disclosable pecuniary interests” within 28 days of election or co-option
- Although the relevant pecuniary interests have not yet been defined, the Act provides that the registration requirement will extend to interests of the councillor or co-opted member’s spouse or civil partner; a person they live with as husband and wife; and a person they live with as if they were civil partners – provided that the councillor or co-opted member is aware of the interest
- The monitoring officer of the district council must establish and maintain a register of interests for town and parish councillors and ensure that they are available for inspection within the district
- The district council must publish the register of interests for all town and parish councillors on its website, and each town or parish council must also publish the register on its website if it has one. The district council must provide any data to the town or parish council to enable it to do this
- Councillors need not update their register unless disclosing an interest at a meeting which was not already included on the register

Disclosure of interests and participation at meetings

- The concept of a personal interest where a councillor declares an interest but can participate in the decision will no longer apply
- If an interest is already on the register, a councillor will not need to disclose it at a meeting
- However, at a meeting a councillor must disclose any pecuniary interest **not** on their register. The councillor must not participate or vote in any discussion of the matter. They must register that interest with the Monitoring Officer within 28 days of the disclosure at the meeting

- The standing orders of a town or parish council **may** provide for the exclusion of a councillor from the meeting while any discussion or vote takes place on a matter in which the councillor has a pecuniary interest.

Dispensations

- As with the current legislation, the Act gives circumstances where a councillor may be granted a dispensation to enable them to participate in a matter where they would otherwise not be able to do so
- When in force though, it will be for the town or parish council to consider the granting of a dispensation, **not** (as currently) the district council, meaning that it should be possible for such a decision to be made with shorter notice than currently

Dealing with allegations

- The district council must have in place arrangements under which allegations that a town or parish councillor has not complied with the code of conduct can be investigated, and arrangements under which decisions on allegations can be made
- The arrangements to deal with complaints must allow for the appointment of at least one “independent person” whose views are to be sought and taken into account before a decision on allegations is made. The views of the independent person can be sought by town or parish councillors who are the subject of an allegation

Standards Committee

- The requirement for the district council to appoint a Standards Committee will no longer apply. Amongst other things, this means that the existing parish representatives who serve on that committee will no longer be in place
- It is likely that there will still be a need for the district council to have a group of councillors (whether a committee or sub-committee) to make decisions on complaints. Any such councillor body would be subject to political balance

Offences

- A councillor commits an offence if, without reasonable excuse, they fail to register a pecuniary interest, fail to disclose it at a meeting, take part in a discussion or get involved with the decision relating to it
- A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 (currently £5,000) on the standard scale and the court may disqualify the councillor from being or becoming a councillor for a period not exceeding five years

General

- A decision of a council is not invalidated because of a failure to comply with the code of conduct
- The declaration of acceptance of office which all councillors have to subscribe after election/co-option will be amended – we will supply further information on this when known

Parishes with Elections in 2012

- If the provisions referred to in this briefing note do come into force on 1 July, councillors elected following the 3 May elections will have to (i) complete the existing declaration of acceptance of office; and (ii) register interests in accordance with the current code of conduct and, subsequently, those that will be required under the new provisions
- This is unfortunate, but unavoidable