

Borough Council of  
**King's Lynn &  
West Norfolk**



# **STANDARDS COMMITTEE**

## **AGENDA**

**THURSDAY 9 FEBRUARY 2012  
at 10.30 am**

Meeting Rooms 1 and 2  
King's Court  
Chapel Street  
King's Lynn  
Norfolk PE30 1EX



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Borough Council of  
**King's Lynn &  
West Norfolk**



King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX  
Telephone: 01553 616377  
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1 February 2012

Dear Member

**Standards Committee**

You are hereby invited to attend a meeting of the above Committee to be held on **Thursday 9 February 2012**, in **Meeting Rooms 1 and 2, Ground Floor, King's Court, Chapel Street, King's Lynn** at **10.30 am** to discuss the business shown below.

Yours sincerely

Chief Executive

**AGENDA**

**1 APOLOGIES**

To receive any apologies for absence.

**2 PREVIOUS MINUTES**

To approve the Minutes of the following meetings (previously circulated, copies available on request):

Full Standards Committee

16 November 2011

Standards Committee – Local Assessment Sub-Committees

1 November 2011 (Complaints 06/11, 12/11, 13/11 and 14/11)  
(Mr M Sale, Mr R Steward, Mr D Shepperson)

16 November 2011 (Complaint 15/11)  
(Mr R Steward, Mr J Dawson, Mr D Shepperson)

12 December 2011 (Complaints 16/11 and 17/11)  
(Mr M Sale, Mr R Steward, Mr D Shepperson)

Standards Committee – Review Sub-Committee

16 January 2012 (Complaint 10/11)  
(Mr G Brierley, Councillor G Wareham, Mr J Dawson)

**3 DECLARATIONS OF INTEREST**

Please indicate whether the interest is a personal one only or one which is also prejudicial. A declaration of an interest should indicate the nature of the interest and the agenda item to which it relates. In the case of a personal interest, the member may speak and vote on the matter. If a prejudicial interest is declared, the member should withdraw from the room whilst the matter is discussed.

These declarations apply to all those members present, whether the member is part of the meeting, attending to speak as a local member on an item or simply observing the meeting from the public seating area.

**4 NEW STANDARDS REGIME**

To receive a report from the Monitoring Officer (pages 1 to 8).

**5 DATE OF NEXT MEETING OF THE FULL STANDARDS COMMITTEE**

To be agreed.

To: Councillors B Ayres, R Bird, D Harwood, D Johnson and G Wareham,

Mr M Sale (Independent Member), Mr R Steward (Independent Member), Mr G Brierley (Independent Member), Mr J Dawson (Parish Representative), Mr E Langford (Parish Representative), Mr D Shepperson (Parish Representative)

N Leader, Legal Services Manager/Monitoring Officer

Contact:

Wendy Vincent, Democratic Services Officer, (01553) 616377 or [wendy.vincent@west-norfolk.gov.uk](mailto:wendy.vincent@west-norfolk.gov.uk)

**REPORT TO STANDARDS COMMITTEE**

Date of meeting: 9<sup>th</sup> February 2012

**Summary**

To advise and update Standards Committee on the changes to the standards regime introduced by the Localism Act 2011.

**Recommendation**

That members note and comment on the report.

**1. BACKGROUND**

**1.1 Introduction**

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for Councillors and co-opted Members at Parish and Borough level. The date for implementation of these changes was proposed to be 1 April 2012, but this implementation has now been delayed until July 1<sup>st</sup>.

This report describes the changes, noting that certain elements of the new regime for standards will be dependent on the detail of secondary legislation.

The following paragraphs address key elements of the new law.

**1.2 Duty to promote and maintain high standards of conduct**

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

**1.3 Standards Committee**

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. As a result, there will no longer be a requirement for a Standards Committee. However, because there will still be a need to deal with standards issues, as non-executive business, it is likely to remain convenient to have a Committee, but without the unique features which were conferred by the previous legislation. Consequently, if Council decides to have a Standards Committee the composition of the Committee will be governed by proportionality and the present restriction to only one member of the Executive on the Standards Committee will cease to apply and the current co-opted independent members will cease to hold office. The Council may however decide to continue to involve Parish Council representatives as co-opted non-voting members of the Committee.

The Act establishes 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 until a period of 5 years has passed. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.

### 1.4 The Code of Conduct

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 Councillor and co-opted members' conduct when acting in that capacity. The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the following seven principles ( the 'Nolan' Principles) :-

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

### 1.5 Interests

The Act abolishes personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. At present it is not known what DPI 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 Act requires the Council's new Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. 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.

## AGENDA ITEM 4

When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

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

- (a) The duty to disclose and withdraw arises whenever a councillor attends any meeting of Council, a committee or sub-committee, or of Cabinet or a Cabinet committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the councillor would be absent from that part of the meeting where the matter in question is under consideration.
- (b) Where these conditions are met, the councillor 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 councillor 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 councillors’ interests, as registered interests will no longer be disclosed at the meeting.
- (c) Where the councillor 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.
- (d) If a councillor has a DPI in any matter, he/she must not –
  - (i) 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
  - (ii) Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- (e) Failure to comply with the requirements becomes a criminal offence, rather than leading to sanctions;
- (f) The Council’s new 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.
- (g) The requirement to withdraw from the meeting room can be covered by Standing Orders, applicable to all Council decision-making bodies.

The new provisions on interests are also applied to decisions of a single councillor acting as a portfolio holder, or where powers are delegated to a Ward Councillor.

### **1.6 Sensitive Interests**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests. So, where a councillor 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 councillors' 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 councillor 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 councillors' interests.

### **1.7 Dispensations**

The provisions on dispensations are significantly changed by the Localism Act.

In future, a dispensation will be able to be granted in the following circumstances –

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.

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.

That the authority considers that the dispensation is in the interests of persons living in the authority's area.

That, without a dispensation, no member of the Executive would be able to participate on this matter.

That the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years

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 a Committee or a Sub-Committee, or to the Monitoring Officer. Council will need to deal with this in due course.



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.
- 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.

### **1.8 Dealing with Misconduct Complaints**

#### **“Arrangements”**

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct 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 current local determination regime will be abolished when the new provisions come into effect.

The Act, therefore 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 will be necessary for Council to delegate appropriate powers to any Committee and to the Monitoring Officer, including decisions on whether to investigate a complaint, how to manage and investigate them, how to deal with “breach” and “no breach” decisions and actions available to the Council where a breach is found. The role of the “Independent Person” and available sanctions are considered further below.

### **1.9 Sanctions**

The Act abolishes existing sanctions under the local determination regime and does not give the Council 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 new Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited. In practice the range of actions that the Council could take might include;

- Reporting findings to Council (or to the Parish Council) for information;
- Recommending to the Member's Group Leader (or in the case of ungrouped members, recommend to Council or Committees ) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- Recommending to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- Removing (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
- Excluding (or recommend that the Parish Council exclude) the member from the Council's office or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

In relatively minor cases, the Council might conclude that a formal letter or other form of recording the matter will be appropriate. Where a case involved a bigger breach of the rules, the Council might conclude that formal censure – for example, through a motion on the floor of the Council is required. In more serious cases of misconduct, the Council might go further and use its existing powers to remove the member from the committee or committees for a time.

### **1.10 Appeals**

There is no requirement to put in place any appeals mechanism against decisions on Code issues. The decisions would however be open to Judicial Review by the High Court on grounds of irrationality/unreasonableness, or if they were taken with procedural impropriety, or if they sought to impose a sanction which the authority had no power to impose.

### **1.11 Independent Person(s)**

The “arrangements” adopted by the Council must include provision for the appointment by Council of at least one Independent Person.

#### **“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 Council (not just of those present and voting).

A person is considered not to be “independent” if –

- (a) he is, or has been within the last 5 years, an elected or co-opted member or an officer of the Council;
- (b) he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the Council (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or
- (c) he is a relative or close friend of a current elected or co-opted member or officer of the Council or of any elected or co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” is widely defined in the Act.

The functions of the Independent Person(s) are –

- They must be consulted by the Council before it makes a finding as to whether a councillor 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);

NB The wording of the Act is equivocal over whether consultation must occur before an investigation is commenced.

- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a member or co-opted member of the Council or of a Parish Council against whom a complaint has been made. This may cause some practical 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.

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.

The Independent Person may be paid an allowance and recoup expenses for carrying out the role.

### **1.12 Transitional Arrangements**

Regulations under the Localism Act will provide for –

- (a) transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- (b) a transitional period for the determination of any outstanding complaints under the current Code of Conduct;
- (c) removal of the power of suspension from the start of the transitional period; and

- (d) removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

**1.13 Adopting a Norfolk-wide approach**

Norfolk County Council have proposed to the Leaders of all Norfolk Authorities that we adopt a Norfolk-wide approach, the key elements of which would be as follows:

- A common Code
- A single framework for the assessment and determination of complaints
- Joint appointment of a panel of say, three or four Independent Persons County-wide to assess and determine all complaints.

At the time of writing this report it is not known whether there is support for this approach.

**Policy Implications**

None

**Financial Implications**

None

**Staffing Implications**

None

**Statutory Considerations**

The Localism Act 2011

**Equalities Considerations**

None

**Risk Management**

None

**Background Papers**

The Localism Act 2011