

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
20 March 2012

Subject: LOCALISM ACT 2011 – NEW STANDARDS REGIME

**All Wards
Scrutiny Committees
Cabinet Member for Corporate Management: Councillor R Kirk**

1.0 PURPOSE AND BACKGROUND:

- 1.1 The Localism Act 2011 significantly amends the Standards Regime as it affects all Councils, including District and Parish Councils. This report suggests amendments to the Council's current structures and processes for dealing with Standards issues.
- 1.2 The Council will also need to adopt a revised Code of Member Conduct, but this will form the subject of a separate report.

2.0 DECISIONS SOUGHT:

- 2.1 To approve recommended structures and processes for dealing with Standards issues.

3.0 LINK TO CORPORATE PRIORITIES:

- 3.1 The Localism Act abolishes the Standards Regime which comprises of Standards for England (formerly the Standards Board), Standards Committees of Local Authorities and a national Model Code of Conduct for Members. The dismantling of Standards for England has begun, but a date for abolishing other elements has yet to be set, although it is likely to be in July 2012.
- 3.2 Although the old regime is to be removed there will continue to be obligations placed on District and Parish Councils, including:-
 - 3.2.1 the requirement to have a local Code of Conduct;
 - 3.2.2 a duty to promote standards of conduct;
 - 3.2.3 mechanisms for investigating allegations of breaches of the Code.

4.0 PROPOSED CHANGES TO DISTRICT COUNCIL ARRANGEMENTS:

Overall Responsibility for Standards:

- 4.1 The Council will no longer be required to maintain a stand-alone Standards Committee and the rules governing composition and procedure will be removed.
- 4.2 However, there will continue to be a need to promote standards amongst Members of the District Council and Parish Councils. In addition, the current Standards Committee has responsibility for District Officer probity issues and the District Council's Complaints Procedure.

- 4.3 Given the close synergy between the responsibility of the Standards Committee for personal probity and the Audit and Governance Committee's responsibility for organisational probity it is recommended that the functions of the current Standards Committee be transferred to the Audit and Governance Committee from the date of abolition of the current Standards Regime. It may be appropriate to re-name the Committee to be the "Audit, Governance and Standards Committee." In the meantime certain preparatory work can be delegated to the Audit and Governance Committee.
- 4.4 There will be no requirement to have Independent or Parish Members on a "Standards Committee" under the new regime and it is not proposed to change the current arrangements for membership of the Audit Committee. It is, however, still recommended that the current Independent and Parish Members have a role (see below).
- 4.5 Consideration will have to be given to a new Code of Conduct. If the Audit and Governance Committee is to become responsible for the Standards Regime then it would be appropriate for it to consider the new Code and make a recommendation to Full Council in due course.

Investigating Allegations:

- 4.6 The District Council will continue to have a duty to make arrangements for investigating allegations of breaches of the new Code of Conduct, either against District Councillors or Parish Councillors. One significant change is that the Parish Councils will have to request the District Council to investigate and will not be bound by any decision following the investigation.
- 4.7 The new legislation gives the District Council significant leeway in setting its own procedures. This contrasts with the existing system which is very prescriptive and bureaucratic, involving three separate Sub-Committees of the Standards Committee.
- 4.8 The decision about whether to investigate allegations is currently taken by a Sub-Committee of the Standards Committee. The decisions are often straightforward and only take a few minutes. It is recommended that the Council takes the opportunity provided by the new regime to delegate to the Monitoring Officer the initial decision on whether an allegation requires investigation, subject to consultation with the Independent Person (see below).
- 4.9 Currently an investigation involves the Monitoring Officer or another person interviewing all of the parties and producing a report which is considered by the Sub-Committee. It is recommended that this element be removed so that allegations proceed straight to a Sub-Committee. This would:-
- 4.9.1 reduce delay;
 - 4.9.2 avoid duplication;
 - 4.9.3 allow all parties to present their version of events to the eventual decision-maker.
- 4.10 The new regime requires the District Council to appoint an Independent Person. This is someone who is not a Member, Co-opted Member or Officer of the Council. This person:-
- 4.10.1 must be consulted by the Authority where it is making a decision on an allegation;
 - 4.10.2 may be consulted in certain other circumstances by the parties.

- 4.11 The Independent Person has to be approved by a majority of Members of the District Council. It is recommended that a Panel of the Audit and Governance Committee begin the process of identifying an Independent Person (and a substitute) to be recommended to Full Council. It is recommended that the Panel comprise the Chairman and Vice-Chairman of the Committee and Councillor M Rigby as the Member from the non-controlling Group.
- 4.12 Currently determinations on allegations are made by the Consideration and Hearing Sub-Committee of the Standards Committee. This Sub-Committee is comprised of an elected Member, an independent Member and a Parish Council representative drawn randomly from a pool. This applies whether the allegation relates to a District Councillor or a Parish Councillor. Although it will still be possible for a non-elected and Parish representative to be on a Sub-Committee or Panel it will no longer be possible for them to have a vote. Consequently it will be necessary to have at least three elected District Members on a Sub-Committee or Panel.
- 4.13 It is recommended that a Standards Hearing Panel be created comprising five Members, three elected District Members (with at least two Party Groups represented), one co-opted non-elected Member and one co-opted Parish representative. The membership of a Panel would be drawn from a Pool comprising six elected Members (four from the Conservative Group and one each from the Liberal Democrat and Independent Groups), the three current non-elected Members of the Standards Committee and the three current Parish representatives on the Standards Committee selected on a rota basis. The Independent Person would also attend to provide views on the allocation. Only the three elected District Councillors would vote and a Chairman would be elected on the day. The Chairman would have a second and casting vote as is normal practice. It will be necessary for Full Council to waive the political proportionality rules for the proposed Panel.

Dispensations:

- 4.14 The new regime will retain the power for the District Council to agree dispensations which will allow Members to participate in meetings even though they have a Disclosable Pecuniary Interest. The situations are where:-
- 4.14.1 so many Members of the decision-making body have Disclosable Pecuniary Interests 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;
- 4.14.2 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;
- 4.14.3 the Authority considers that the dispensation is in the interests of persons living in the Authority’s area;
- 4.14.4 without a dispensation, no Member of the Cabinet would be able to participate on this matter;
- 4.14.5 the Authority considers that it is otherwise appropriate to grant a dispensation.

It is recommended that decisions on dispensations be delegated to the Monitoring Officer with an “appeal” against a refusal to the Audit, Governance and Standards Committee. This would speed up the process whilst maintaining a fall-back where those applying are unhappy with the Monitoring Officer’s decision. The Monitoring Officer would have the option of referring the matter to the Committee in any event.

Responses to Breaches of the New Code:

- 4.15 The new regime does not give a Standards Committee or Panel any statutory powers to issue a sanction on District Members or Parish Members. Indeed, the final decision on Parish Members must be taken by the Parish Council. In respect of District Members, the powers of the Council to take action against individual Members will now be governed by existing common law principles about how Councils may control their Members. In practice these will be limited to those which are directed at securing the ability of the Council to effectively carry out its functions rather than “punishing” a Member. This might include, in respect of the Member complained about:-
- 4.15.1 reporting findings to Full Council for information with recommendations on changes to procedures if appropriate; and/or
 - 4.15.2 advising the Member as to how they might comply with the Code of Conduct in future; and/or
 - 4.15.3 recommending to the Member’s Group Leader that the Member be removed from a Committee or Sub-Committee; and/or
 - 4.15.4 recommending to the Leader of the Council that the Member be removed from the Cabinet; and/or
 - 4.15.5 instructing the Monitoring Officer to offer the Member training; and/or
 - 4.15.6 recommending to Cabinet or Council (as appropriate) that the Member be removed from some or all Outside Bodies; and/or
 - 4.15.7 recommending to Council the withdrawal of facilities (such as computer, access to web-site, e-mails, etc) from the Member’ and/or
 - 4.15.8 recommending to Council the exclusion of the Member from the Council’s offices or premises.

Other recommendations may be appropriate. The above could also be recommended to Parish Councils.

Registration and Disclosure of Interests:

- 4.16 The new regime provides for the Monitoring Officer to continue to maintain a Register of Member Interests. The Register will contain Disclosable Pecuniary Interests and such other matters as the Council requires to be registered through its Code of Conduct. The details will be the subject of a separate report. The Monitoring Officer must also maintain a Register for Parish Councillors.
- 4.17 Arrangements for disclosing interests and participating at meetings may change. There are new statutory requirements to disclose certain pecuniary interests, under-pinned by new criminal offences. The Council can specify other disclosable interests in its Code of Conduct. The detail will be dealt with in a separate report on the Code of Conduct. There will need to be amendments to Council/Committee Procedure Rules if Members are to be excluded from meetings. This will be dealt with in the separate report.

Support and Training:

4.18 The Council will continue to have a responsibility to support Parish Councils and Councillors and guidance and training will be offered in due course.

4.19 Training for District Council Members will be undertaken at an early stage.

5.0 LINKS TO CORPORATE PRIORITIES:

5.1 None.

6.0 RISK ASSESSMENT

6.1 Although the Standards Regime is aimed at individual probity there are risks to the Council's reputation if appropriate structures and processes are not put in place to seek to maintain standards of conduct. If processes are not seen as fair, open and transparent there is a risk of the monitoring process losing credibility.

6.2 The proposed structures and processes seek to make the processes more effective and efficient whilst maintaining a credible procedure for setting and monitoring standards.

7.0 SUSTAINABILITY IMPLICATIONS:

7.1 Reducing the number of Sub-Committees and delegating some functions to the Monitoring Officer will reduce the need for some Members to travel to meetings.

7.2 There will also be a small saving in paper.

8.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:

8.1 Non-elected and Parish Members of the Standards Committee currently receive Allowances totalling approximately £1,400 per annum. There may be fewer time commitments under the new regime. The Remuneration Panel should be asked to look at the level of Allowance.

8.2 The Independent Person will not be a Member of the Council and technically can be remunerated without reference to the Remuneration Panel. Nevertheless it is considered appropriate to ask the Panel for a view on this subject. Any remuneration would come from the Members' Allowances budget and may be balanced by a likely reduction in Allowances for non-elected Members.

9.0 LEGAL IMPLICATIONS:

9.1 A number of legal requirements have been identified in the report. Further detail is awaited in the shape of Statutory Instruments. The implications will be reported to the relevant Committee as appropriate.

10.0 SECTION 17 CRIME AND DISORDER ACT 1998:

10.1 None.

11.0 EQUALITY/DIVERSITY ISSUES:

11.1 None.

12.0 RECOMMENDATIONS:

12.1 To recommend to Full Council:-

- (1) to agree in principle that the current functions of the Standards Committee (as amended by the Localism Act 2011) be transferred to a new Audit, Governance and Standards Committee and that revised Terms of Reference be considered at the next Annual Meeting;
- (2) that the Audit and Governance Committee be given authority to consider and make recommendations to Council on the new Code of Conduct;
- (3) to agree that the Monitoring Officer (in consultation with the Independent Person) be authorised to determine whether allegations under the new Code of Conduct should be investigated and that the Audit, Governance and Standards Committee approve the principles to be applied in reaching a decision;
- (4) that a Panel comprising the Chairman and Vice-Chairman of the Audit and Governance Committee and Councillor M Rigby be authorised to identify an Independent Person (and substitute) to be recommended to Full Council;
- (5) that the proposals for a Standards Hearings Panel as set out in paragraph 4.13 be approved in principle with further details to be approved at the Annual Meeting;
- (6) that the options set out in paragraph 4.14 form the basis of guidance to be provided by the Monitoring Officer to the Standards Hearing Panel about its response to breaches of the Code of Conduct;
- (7) that the proposals for delegation of decisions on dispensations as set out in paragraph 4.15 be approved in principle and further details be approved by the Audit and Governance Committee;
- (8) to note that the Monitoring Officer will continue to maintain Registers of Members' Interests for the District Council and Parish Councils;
- (9) to note that training will be offered to District Council and Parish Council Members on the new regime in due course.

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Background papers: None
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