

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO STANDARDS COMMITTEE

Agenda Item No.

meeting date: WEDNESDAY, 1 FEBRUARY 2012
 title: IMPLEMENTING THE PROVISIONS OF THE LOCALISM ACT 2011
 submitted by: CHIEF EXECUTIVE
 principal author: DIANE RICE – HEAD OF LEGAL AND DEMOCRATIC SERVICES

1 PURPOSE

1.1 To describe the changes arising from the Localism Act 2011 (the Act) relating to Standards and Governance and to contribute to planning the steps necessary for the Council to implement the new regime.

1.2 Relevance to the Council's ambitions and priorities:

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| <ul style="list-style-type: none"> • Council Ambitions - } • Community Objectives - } • Corporate Priorities - } • Other Considerations - } | <p>The Council aims to be a well-managed Council. Ensuring that members have clear guidance as to their conduct, and implementing the provisions of the Act contribute to this ambition.</p> |
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2 BACKGROUND

2.1 The Localism Act 2011 makes fundamental changes to the system for regulating the Standard of Conduct of Elected and Co-opted Councillors. The date for implementation of the provisions of the Act varies, and in certain respects implementation is dependant on regulations which have yet to be published.

2.2 However the Council should begin to consider how it will make arrangements to implement the Act.

3 ISSUES

3.1 Set out below in relation to some of the major changes made by the Act is a description of the current arrangements, and the changes made by the Act for consideration when deciding the most appropriate solution for this Council.

3.2 Standards Committee

3.2.1 Section 55 of the Local Government Act 2000 currently provides that the Council must have a Standards Committee, and the format of that Committee ie the requirement for Independent and Parish Council Members. The Localism Act 2011 repeals Section 55 of the Local Government Act, therefore the Council's current Standards Committee will operate in its existing form until July 2012, when the requirement to have a separate Committee of a particular composition will cease.

3.2.2 The Council will therefore have to decide whether to retain a separate Standards Committee, similar in composition to its other Committees, or the duties of the Committee with those of another Committee.

- 3.2.3 Attached at Appendix 1 is copy of the current Terms of Reference of the Standards Committee, to assist Members in considering where such responsibilities should like in the future.
- 3.2.4 Members should note that the duty to promote and maintain high standards of conduct of Elected and Co-opted Members remains unchanged by the Localism Act 2011.
- 3.2.5 The Council's current Standards Committee has had responsibility for ensuring Council carried out its duty to promote and maintain high standards of conduct, and also responsibility for investigating complaints.
- 3.2.6 Due to the fact that the Council has had very few complaints in relation to its Elected Members, the workload of the Committee has been small and has resulted in the Committee meeting infrequently.
- 3.2.7 Based on the pattern that has developed to date there is no evidence to suggest that the Council should retain a separate Committee dealing only with Standards related issues. The Council has other Committees where the remit of the Committee, and the type of work carried out, would be compatible with including current duties of the Standards Committee, eg the Council's Accounts and Audit Committee.
- 3.2.8 It is a matter for Full Council to decide, based on the recommendation of the Council's Policy and Finance Committee, how it should distribute the Council's responsibilities between Committees, how often these Committees should meet and their composition.
- 3.2.9 Policy and Finance Committee will also need to consider whether the Constitution of whichever Committee takes responsibility for Standards should include Co-opted Parish Council Members as the Council retains its responsibility for promoting good standards amongst Parish Councils and for investigating complaints against Parish Council Members.
- 3.2.10 Members will note that the Act includes the requirement to have Independent persons. Whilst it would be possible to have a Committee which operates as a joint Committee with Parish Councils enabling Parish Council membership of the Committee, it could also be that the Council would consider when deciding what its arrangements will be for an Independent person that there should be an independent person with relevant experience to contribute a Parish Council perspective.
- 3.2.11 Should Policy and Finance Committee decide to combine the current responsibilities of the Standards Committee with those of the Accounts and Audit Committee, consideration should be given to the number of Members on that Committee, currently 7. This might be too few Members to enable a proper investigation of complaints.

3.3 The Code of Conduct

- 3.3.1 The current provisions about the Model Code of Conduct will be repealed by the Act. Members will no longer have to give an undertaking to comply with the Code of Conduct. However the Council will still be required to adopt a Code of Conduct which governs the conduct of Elected and Co-opted Members and in particular deals with how the Council will register the new category of interest described as "disclosable pecuniary interests" (DPI's) which broadly equate to the current prejudicial interests.

- 3.3.2 The Act requires the Authority's new Code to contain appropriate requirements for registration and disclosure of other pecuniary interests and non-pecuniary interests. However it is not yet possible to finalise a Code which reflects these provisions as the Regulations are not yet to hand.
- 3.3.3 When the Council last adopted its Code of Conduct it opted not to make any changes to the Model Code of Conduct. Currently there are 2 Model Codes under consideration, one on behalf of the Lancashire Authorities and other by the Association of Council Secretaries and Solicitors (ACSES).
- 3.3.4 The Council may wish to adopt one or other Model Code of Conduct.
- 3.3.5 Once all the regulations are published the Head of Legal and Democratic Services will prepare and present to Full Council, for adoption, a Draft Code of Conduct which satisfies the requirements.
- 3.3.6 Members should be aware that the Act prohibits a Member with a DPI from participating in authority business and the Full Council will also have to decide whether or not it would be appropriate to adopt a Model Standing Order which sets out the position in relation to how Members who have a DPI are dealt with when this arises.

3.4 Misconduct Complaints

- 3.4.1 The Act requires that the Council to adopt arrangements for dealing with complaints about breaches of the Code of Conduct by both District Council Members and Parish Council Members. Such complaints can only be dealt with in accordance with these arrangements. 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 fail to comply with the relevant Code of Conduct.
- 3.4.2 The current requirements for separate initial assessment, review, and hearing sub-committees are repealed. The Council can make its own arrangements including delegation to the Monitoring Officer of initial investigations.
- 3.4.3 It would be appropriate therefore for the Committee to recommend that current arrangements continue until the Standards Committee ceases to have responsibility for complaints with a further report to be taken to whichever Committee takes responsibility for Standards, to determine the arrangements for investigating a complaint post July 2012.
- 3.4.4 Similarly the Council will also have to decide what arrangements that will be adopted for taking action where a Member of the District or Parish Council has failed to comply with the new Code of Conduct. Further advice has been sought by ACSES in relation to the sanctions available under the Act. The current advice appears to be that rather than a process which "punishes" the Member concerned, the emphasis will be on securing improved compliance with the Code and ensuring that the Council can continue to discharge its functions effectively at all times. The suggestions currently made for action in response to a finding are, for information, as follows:
- In the case of Parish Councils a report to that Council for information.
 - In the case of the District Council, a recommendation to the Members Group Leader, suggesting removal from any or all Committees or Sub-Committees of the Council.

- Training.
- Removing the Member from outside appointments.
- Withdrawing facilities eg access to Council e-mail internet etc.
- Excluding the Member from the Council Offices or other premises save for the Council meeting rooms where the Councillor is allowed to continue as a Member of the Committee.

3.5 Independent Persons

3.5.1 The Council must make provision for the appointment of at least one Independent Person. 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 (ie not just of those present and voting).

3.5.2 A person is considered not to be independent if:

- he/she is or has been within the last five years either an Elected or Co-opted Member or an Officer of the District Council or of any of the Parish Councils within its area;
- he/she 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 Council's within its area;

(This would appear to preclude any of the current co-opted or Independent Members of the Standards Committee from being appointed as an independent person, additional advice is being sought by ACSES in relation to this provision); or)

- he/she 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.

The functions of the Independent Person are as follows:

- They 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 it decides on action to be taken in respect of that Member.
- 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 District Council or a Parish Council against whom a complaint has been made.

This latter provision may prove problematic as it would be inappropriate for an Independent Person who had been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced in dealing with the determination of that complaint. This is something the Council will have to take into account when deciding how many Independent Persons to appoint. The Act gives the discretion to appoint one or more Independent Persons, yet provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated.

- Members may wish to consider, bearing in mind the potential for conflict set out above, recommending the appointment of at least two Members and also recommending that wherever possible one or both of these Members should have some knowledge or past experience (subject to the limits on who can qualify to be an Independent Person) of Parish Councils.
- The Act provides for remuneration for the Independent Person however the remuneration is not a matter for the Independent Remuneration Panel as it is no longer a Members' allowance.

It would be helpful if the Council had a formula for calculating the allowance for an Independent Member.

The current Chair of the Council's Standards Committee receives a sum equivalent to $\frac{1}{3}$ of a Members allowance.

It is likely that the role of an Independent Member will be less onerous than that of a Standards Committee Independent Member and it would therefore be appropriate to set the allowances at less than the current allowance namely at $\frac{1}{4}$ of the current Members allowance. In view of the lengthy process of advertising and appointing an Independent Member, the Standards Committee may wish to recommend to the Council that the process of recruiting Independent Members commences shortly, and also suggest a method of appointing the Independent Member eg that shortlisting and interviewing of candidates be carried out by a group of Members, drawn from Standards, Policy and Finance and Accounts and Audit Committee in order to make a recommendation to Council for final appointment.

3.6 The Register of Members' Interests

- 3.6.1 The Act abolishes the provisions relating to concepts of personal and prejudicial interests, but introduces the concept of disclosable pecuniary interests (DPI's) (not yet defined). 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 same provisions apply to the Register for Parish Councils.
- 3.6.2 Whilst the intention of the Act was to simplify the registration requirement, in practice the Act extends the requirement for registration to cover not just the Members own interests but also those of the Members spouse or civil partner or someone living with a Member in a similar capacity.
- 3.6.3 Whereas at present there is no immediate sanction for failure to register complete the register of interests under the new provisions, each Elected or Co-opted Member must register DPI's, within 28 days of becoming a Member. Failure to register is made a criminal offence, but does not prevent the Member from continuing to act as Member.
- 3.6.4 There is no continuing requirement for a Member to keep the Register up to date, but it is likely that Members will register new interests from time to time as this avoids the need for disclosure in meetings. The Council will therefore need to authorise the Monitoring Officer to prepare and maintain the new Register of Members Interests and to ensure that it complies with the requirements of the Act, and the Council's Code of Conduct, once adopted, and to ensure it is available for inspection as required by the Act.

3.6.5 The Monitoring Officer will also be required to ensure that all Members are informed of their duty to register interests.

3.7 Disclosure of Interests and Withdrawal From Meetings

3.7.1 Whilst DPI's are broadly equivalent to prejudicial interests there are some important differences namely:

- the duty to disclose and withdraw arises whenever a Member attends any meeting of the Council, a Committee or Sub-Committee of a Council and is aware that he/she has a DPI in any matter being considered at the meeting ie the requirement to disclose applies even if the Member would be absent from that part of the meeting where the matter in question is under consideration.
- in a change to the current requirements the Member does not have to make such a disclosure if he/she has already registered a DPI or at least sent a request off to the Monitoring Officer to register it.

3.8 Dispensations

3.8.1 At present a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation, in future dispensations will be granted in the following circumstances:

1. Where so many Members of the decision-making body have a DPI in a matter that it would "impede the transaction of the business" ie in practice this means that the decision-making body would be inquorate as a result.
2. Where, 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 pre-determined to vote on party lines on the matter in which case it would be inappropriate to grant a dispensation to enable them to participate.
3. The Authority considers that the dispensation is in the interests of persons living in the Authority's area.
4. Where the Authority considers it otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify for how long it will last up to a maximum of 4 years. Whereas the Local Government Act 2000 requires dispensations to be granted by Standards Committees the Localism Act 2011 gives discretion for this power to be delegated to Standards Committee or a Sub-Committee or to the Monitoring Officer. The Council will therefore be required to determine which arrangements would be appropriate for granting dispensations; this will ultimately be a matter for the Committee which takes over responsibility for granting dispensations.

Consideration could be given to use of a Sub-Committee being to deal with dispensations.

4 **RECOMMENDED THAT COMMITTEE**

- 4.1 Consider the changes introduced by the Localism Act 2012.
- 4.2 Assist the Council in adopting arrangements to comply with the Act by proposing the following recommendations:

Standards Committee

To operate as at present, including when investigating complaints, until July 2012, thereafter the responsibilities of the Committee be combined with the duties of Accounts and Audit Committee.

Consideration should be given to increasing the number of Members on that Committee, and the involvement of Parish Council representatives.

Code of Conduct

Consider adoption of a Model Code of Conduct, either proposed by ACSES or jointly with the other Lancashire Authorities.

Misconduct Complaints

Refer the detailed arrangements to whichever Committee has included within its Terms of Reference those of the existing Standards Committee.

Independent Persons

Authorise the Monitoring Officer to put arrangements in hand to recruit 2 Members, in consultation with a Working Group of 6 Members, comprising 2 representatives of Standards Committee, Policy and Finance Committee and Accounts and Audit Committee.

Nominations from Standards Committee.

Register of Interests/Dispensations/Standing Orders

Defer action on these matters pending further regulation, a report to be submitted to Full Council by Head of Legal and Democratic Services on 24 April 2012, at such time as the effect of the provisions is clarified.

HEAD OF LEGAL AND DEMOCRATIC SERVICES

For further information please ask for Diane Rice, extension 4418.

CONSTITUTION OF THE STANDARDS COMMITTEE

THE ANNUAL COUNCIL MEETING WILL ESTABLISH A STANDARDS COMMITTEE

1 Composition

1.1 Membership

The Standards Committee will compose of:

- four councillors;
- four persons who are not councillors or officers of the Council or any other body having a standards committee [independent members];
- four members of parish councils wholly or mainly in the Council's area [Parish Members];

1.2 Independent Members

Independent members will be entitled to vote at meetings;

1.3 Parish Members

At least one parish member must be present when matters relating to parish councils or their members are being considered;

2 Role and Function

- 2.1 promoting and maintaining high standards of conduct by councillors and co-opted members;
- 2.2 assisting the councillors and co-opted members to observe the Members' Code of Conduct;
- 2.3 advising the Council on the adoption or revision of the Members' Code of Conduct;
- 2.4 monitoring the operation of the Members' Code of Conduct;
- 2.5 advising, training or arranging to train councillors and co-opted members on matters relating to the Members' Code of Conduct;
- 2.6 granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct;
- 2.7 dealing with any reports from a case tribunal or interim case tribunal and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer.
- 2.8 the exercise of (2.1) to (2.7) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils.