

Update on the new standards regime

1. Members are aware that the Localism Act makes fundamental changes to the system of the regulation of standards of conduct for elected and co-opted councillors. The date for the implementation of these changes was initially proposed to be 1 April 2012 but is now 1 July 2012.

Code of Conduct

2. All Councils are placed under a statutory duty to promote and maintain high standards of conduct for their elected and co-opted members.

3. The current general principles and model code of conduct will no longer apply. All Councils are required to adopt a new code of conduct governing elected and co-opted members conduct when acting in that capacity. The new code of conduct must, viewed as a whole, be consistent with the following seven principles:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

4. Councils have discretion as to what they include in their new code, provided that it is consistent with the seven principles. The LGA has recently produced a model code and the DCLG has produced an illustrative list of what a local authority code of conduct might look like (Appendix 1). Neither code is considered to be satisfactory. Some Councils are proposing to adopt a short version of a code, others are proposing to adopt a more detailed version. Two examples, one of a short version and another more detailed version are attached (Appendix 2). Members are asked to consider the versions attached to this report and let me have their views on which type of code should be adopted by the Council.

Pecuniary Interests

5. Regulations, recently made under the Localism Act, require the registration and disclosure of “Disclosable Personal interests” (DPIs).

6. The Act also requires an authority’s code to contain arrangements it considers appropriate for the registration and disclosure of other pecuniary interests and non- pecuniary interests.

7. The Act makes it a criminal offence to fail to register a DPI and prohibits members with a DPI from participating in authority business. A person

found guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, which is currently £5,000. In addition on conviction the Court may also disqualify the member in question, for a period not exceeding 5 years from being or becoming a member or co-opted member of an authority. Prosecutions will only be able to be instituted by or on behalf of the Director of Public Prosecutions.

Dealing with Misconduct complaints

8. The Act requires Bath and North East Somerset Council to adopt arrangements under which allegations of a breach can be investigated and a decision made regarding the allegations. Such complaints can only be dealt with in accordance with such arrangements. Therefore the arrangements must set out in some detail the process for dealing with complaints and actions which may be taken against a member who is found to have failed to comply with the relevant Code of conduct.

9. The Act repeals the requirements for separate referral and review sub-committees. As the statutory provisions will no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it would be necessary for Council to delegate appropriate powers to any Standards Committee which it decides to set up and to the Monitoring Officer to deal with such matters under the new Code.

Independent Person

10. The arrangements to be adopted by Bath and North East Somerset Council must include provision for the appointment by Council 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 Council (i.e. not just of those who are present and voting).

11. A person is considered not to be independent if he/she is or has been within the last 5 years, an elected or co-opted member or officer of the Council; or has been within the last 5 years, an elected or co-opted member of any committee or sub-committee of the Council or a relative or close friend of a current elected or co-opted member of the Council or of any elected or co-opted member of any committee or sub-committee of the Council.

12. The functions of the Independent Person(s) are –

(1) their views must be sought and taken into account where the Authority has decided to investigate an alleged breach, 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 where this relates to an allegation that it has decided to investigate – but not before the Council makes a decision to investigate

(2) they may be consulted by the Authority in respect of a standards complaint at any other stage

(3) they may be consulted by a member or co-opted member of the Council against whom a complaint has been made.

13. The West of England authorities are currently considering placing a joint advertisement for Independent Persons and having a joint interview panel. It is considered that it would be appropriate for there to be two Independent Persons for this Council with possibly another as a reserve.

Members' interests

14. The Localism Act abolishes the concepts of personal and prejudicial interests. Instead regulations define Disclosable Pecuniary Interests (DPIs)- (Appendix 3 - briefing note). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council's website. 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. There is no continuing requirement for a member to keep the register up to date except on re-election or re-appointment. However there is a requirement to update the register within 28 days of a meeting at which the member was present and an unregistered DPI arose.

Parish and Town Councils

15. Parish and Town Councils are required to adopt a code of conduct. This Council is required to have arrangements in place to deal with complaints against parish councillors including arrangements under which decisions on allegations can be made. NALC has recently produced a model code for Town and Parish Councils. The NALC model code has not been made available to unitary councils so I am unable to comment on it but I have recommended all Town and Parish Councils to consider it rather than attempting to devise their own code

16. Parish and Town Councillors are required to register their interests. The Monitoring Officer is required to ensure that every Parish and Town Council's register is available on this Council's website and if the Parish/Town Council has a website it must ensure that its register is accessible on that website.

17. Arrangements are being put in place to publish Parish and Town Councils' registers of interest on the Council's website. Guidance on interests will also be made available to Parish and Town Councils.

18. Parish and Town Councils are now responsible for granting their own dispensations (previously a B&NES role.)

Dispensations

19. The provisions on dispensations have been significantly changed by the Localism Act 2011.

20. The current position is that a member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds:-

1. That at least half of the members of a decision making body have prejudicial interests
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.

21. From 1 July 2012 a dispensation will be able to be granted in the following circumstances:-

1. That so many members of the decision making body have disclosable pecuniary interests in a matter that it would impede the transaction of business. In practice, this means that the decision making body would be inquorate as a result
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,
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area,
4. That, without a dispensation, no member of the Cabinet would be able to participate on this matter, or,
5. That the authority considers that it is otherwise appropriate to grant a dispensation.

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

23. Under the new standards regime the function of granting a delegation may be delegated to the Standards Committee, a sub-committee or the Monitoring Officer. Under the previous regime the function could not be delegated to a sub-committee or the Monitoring Officer.

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