

CHESHIRE EAST

STANDARDS COMMITTEE

Date of meeting: 24 January 2011

Report of: Interim Borough Solicitor / Monitoring Officer

Title: The Future of the Standards Regime and the Standards Committee

1.0 Purpose of the Report

- 1.1 To inform members of the content and impact of prospective legislation.

2.0 Decision Required

- 2.1 To note the report and to consider the Committee's current view on future provisions for Cheshire East Borough Council under the emerging legislation, and how this might be taken forward.

3.0 Financial Implications

- 3.1 Financial implications are yet to emerge; whilst costs of investigations under current legislation would no longer apply, it is unclear what costs might arise from the alternative proposed provisions.

4.0 Legal Implications

- 4.1 As set out below.

5.0 Risk Assessment

- 5.1 The presentation of this report explains the proposed change in the legislation surrounding the standards and conduct regime, the implications and possible responses, thereby ensuring that the Council is able to begin to prepare its response within the confines of the existing and emerging law.

6.0 Background/Context

- 6.1 On 25 May 2010 the Coalition Government announced its intention to abolish the current Standards regime, along with Standards for England, as part of the forthcoming Localism Bill, which at that time was still to be published. The announcement can be found at

<http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-decentralisation-and-localism-bill-50673>

- 6.2 The Coalition Government also announced its intention to legislate to deal with what was considered to be the unsatisfactory way in which the issues of bias and predetermination are currently treated.
- 6.3 The Localism Bill was published on 13 December 2010. It is a very extensive document which covers a wide range of issues, of which only those of predetermination and standards/conduct are examined for the purpose of this report. Clause 13 of the Bill deals with Predetermination. Clauses 14 to 20 and Schedule 4, deal with Standards and Conduct of Local Government Members.

7.0 Predetermination

- 7.1 Clause 13 provides that if as a result of an allegation of bias or predetermination, there is an issue about the validity of the decision of a relevant authority, in that the decision maker had, (or appeared to have had) a closed mind when making the decision, he/she is not to be taken to have had, a closed mind when making the decision just because the he/she had previously done anything that directly or indirectly indicated what view the he/she took, (or would or might take) in relation to a matter. This applies only to decisions by members (including co-opted members) of the authority.
- 7.2 This Clause, if enacted, will in future have to be taken into account by the Courts in cases where any decision is challenged on this basis, and developing case law will in due course show what effect this new provision will have.

8.0 Member Conduct

- 8.1 Clause 14 proposes to give effect to Schedule 4, to amend existing provisions relating to the conduct of both local government members and employees in England, repeal codes of conduct currently adopted and the undertakings to comply with them, and for the Secretary of State to make regulations to abolish Standards for England.
- 8.2 Schedule 4 proposes to enact a raft of changes to a number of earlier Acts of Parliament, including The Local Government and Housing Act 1989, the Local Government Act 2000, the Freedom of Information Act 2000 and the Local Government and Public Involvement in Health Act 2007, in order to remove references to Standards for England, and make the necessary consequential changes to bring into force the new replacement regime.

- 8.3 Clause 15 places a duty on local authorities to promote and maintain high standards of conduct for members and co-opted members.
- 8.4 Clause 16 provides a power for relevant authorities to adopt a voluntary code dealing with the conduct expected of members and co-opted members. The authority may re-use its existing code to conduct, adopt a new code to replace in existing code of conduct and may simply withdraw its existing code of conduct without replacing it. It may publicise these decisions in any manner it considers appropriate, S16 further provides that if a written allegation is made about the conduct of a member, it has a duty to consider whether it is appropriate to investigate it, and if so, to investigate in such manner as it thinks fit. If it finds a failure to comply with the code, it may have regard to that failure in deciding whether to take action, and what action to take.
- 8.5 Clause 17 gives for the Secretary of State power to make regulations requiring the Monitoring Officer to establish and maintain a register of interests for members and co-opted members. The regulations may provide for

- Registration of financial or other interests
- Disclosure of relevant interests before taking part in the business of the authority
- The prevention /restriction of participation in the business of the authority if the member has a relevant interest in the subject matter
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- The granting of dispensations
- Sanctions the authority may impose for failure to comply with the regulations

It should be noted that any sanctions available to the authority would not include the suspension or partial suspension or disqualification of a member.

- 8.6 Clause 18 introduces a new offence of breaching certain regulations made under Clause 17. Such an offence would be triable summarily only (i.e. by the Magistrates' Court only, not Crown Court) and the maximum fine available would be at Level 5, currently £5,000. Generally, this is the maximum fine available for most offences tried by Magistrates. As well as a fine, disqualification for up to 5 years from being or becoming a member or co-opted member of a relevant authority would be available to the Court as a further sanction. Only the

Director of Public Prosecutions would be able to bring such a prosecution, and it would have to be brought within a period of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to the prosecutor's knowledge, with a maximum deadline of 3 years after the commission of the offence, or if the contravention was continuous, the last date on which it was committed.

- 8.7 Clauses 19 and 20 propose transitional provisions and proposed amendments following the proposed abolition of Police Authorities.
- 8.8 The Localism Bill received its First Reading on 13 December and is due for its Second Reading on 17th January 2011. Although its standards and conduct provisions are at an early stage, and may undergo some revision before final enactment, the Government has made its intentions clear, and the Standards Committee is therefore invited to note the current position and begin to consider its view on future arrangements.

9.0 Reasons for Recommendation

- 9.1 As outlined in part 6 above.

For further information:

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Background documents

Localism Bill.