

CHESHIRE EAST COUNCIL

Standards Committee

Date of Meeting: 25th July 2011
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Localism Bill and the Introduction of Voluntary Standards Committee and Code of Conduct for Members

1.0 Purpose of the Report

1.1 To inform and update Members on developments in respect of anticipated Legislation contained within the Localism Bill which will replace the current Code of Conduct and make related changes to the Standards regimes.

2.0 Decision Requested: That -

2.1 Members note the report.

2.2 Council be recommended to approve in principle the adoption of a voluntary Code of Conduct and the establishment of a voluntary Standards Committee once the Localism Bill is enacted.

2.3 Further reports be brought on progress to future meetings of the Committee.

3.0 Reasons for Recommendations

3.1 To advise Members on the progress of the Localism Bill and to make a formal recommendation to Council in respect of the future of the Standards regime within Cheshire East Council.

4.0 Wards Affected

4.1 Not applicable.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications including - Climate change - Health

6.1 None identified.

7.0 Financial Implications

7.1 None identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The Localism Bill was published on the 13th December 2010. It is an extensive document covering a wide range of issues and only those which concern the Standards / Conduct area are examined for the purposes of this report. Clauses 15-21 and schedule 4 deal with Standards and Conduct of Local Government Members.

9.0 Risk Management

9.1 Under the proposed Legislation the Council will still have a duty to promote and maintain high standards of conduct by both Members and co-opted Members of the Authority. The development of an alternative voluntary Code of Conduct will strengthen governance arrangements and ensure the Authority can demonstrate compliance with the new duty as set out in the Bill.

10.0 Background and Options

10.1 The Localism Bill was published on the 13th December 2010. Amongst other matters it proposes the abolition of the Standards regime and sets out new proposals on how Local Authorities will deal with Member conduct and ethical standards issues in the future. Standards for England has confirmed through their website that it is anticipated that they will cease to investigate complaints referred to them in late 2011 and will be formally abolished in early 2012. The Bill is currently going through the committee stage at the House of Lords and is timetabled to reach the report stage in September 2011 and it is anticipated that the Bill will receive Royal Assent in late 2011.

10.2 Schedule 4 of the Bill abolishes Standards for England and the first tier tribunal's jurisdiction to hear appeals concerning the conduct of Local Authority Councillors. In future the Secretary of State will not have the power to issue a Model Code of Conduct and there will be no requirement for Local Authorities to establish a Standards Committee.

10.3 Local Authorities will still however have a duty to promote and maintain high standards of conduct by Members and co-opted Members of the Authority. The Bill provides that Authorities may adopt a voluntary Code of Conduct for their Members should they wish to do so. Although it is not yet clear how all Authorities will respond it does appear likely that many Authorities will choose to do so. Recently Andrew Stunell (Under Secretary of State for CLG) has stated "the Government therefore believe that if a Local Authority wants to adopt its own Code of Conduct, it should be free to do so. It is almost inconceivable that Authorities will not adopt one, as has been found in the case of a policy for employees".

10.4 The Secretary of State will have power to make regulations which require the Monitoring Officer to establish and maintain a Register of Interest for Members and co-opted Members. The regulations may provide for:-

- Registration of financial or other interests
- Disclosure of relevant interest 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
- The granting of Dispensations
- Sanctions which the Authority may impose for failing to comply with the regulations

10.5 It is important to note that the Council will not be able to suspend or partially suspend or disqualify an Elected Member.

10.6 A Member or co-opted Member will have committed an offence if he or she fails to register or fails to disclose a financial or other interest as required or takes part in the business of the Authority where the regulations have restricted or prohibited his or her participation. Such an offence will be triable in the Magistrates Court and the maximum fine available will be at Level 5 (currently £5,000). In addition disqualification for up to 5 years from being or becoming a Member or co-opted Member of a relevant Authority will be available to the court as a further sanction. Only the Director of Public Prosecutions will be able to bring a prosecution.

10.7 Transitional provisions will deal with those cases which are still to be determined once the Bill is enacted.

11.0 Local Government Group and ACSeS Paper

11.1 In February 2011 the Local Government Association (LGA) and Association of Council Secretaries and Solicitors (ACSeS) jointly published a paper on maintaining high ethical standards in Local Government. The paper sets out the methods that will be still be available to Local Authorities to deal with Member conduct following the abolition of the Standards Board regime which include:-

- Fiduciary duties of Councillors
- The requirement for Councillors to continue to register any relevant interests or withdraw for a personal interest
- Civil law remedies (e.g. libel, slander and misfeasance in public office)
- Existing equalities and discrimination law
- Electoral offences (such as undue influence, bribery, postal and proxy voting)
- Criminal law remedies (such as those under the Fraud Act 2006)
- Powers of the Local Government Ombudsman
- Common law remedies (such as findings of bias, predisposition or predetermination)
- Voluntary local Codes of Conduct agreed by Local Authorities

11.2 A copy of the paper is enclosed at Appendix 1

12.0 Improvements and Issues Working Group

12.1 On the 22nd February 2011 the Standards Committee held a meeting of the Improvements and Issues Working Group which was set up as an informal group of Members of the Standards Committee in 2009/2010 to look in detail at a variety of issues. It has no formal decision making powers and reports back to the full committee with any findings as appropriate.

12.2 At the meeting of the committee on 28th March 2010 Members considered the recommendations of the working group and requested that officers liaise with the Cheshire Association of Local Councils (CHALC) with a view to preparing a draft voluntary Code of Conduct for consultation purposes. In order to facilitate the preparation of a voluntary Code of Conduct Members are requested to formally recommend to full Council that the Authority should adopt a voluntary Code of Conduct and should continue to establish and appoint Members to a Standards Committee which would have overall responsibility for Member conduct issues and with specific responsibility for the new duty placed on all Local Authorities to promote and maintain high standards of conduct by Members and co-opted Members of the Authority.