

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 21 November 2011

Report of: Borough Solicitor/Monitoring Officer

Subject/Title: Standards Regime and Localism Bill – Dealing with
Complaints under a Future Code of Conduct

1.0 Report Summary

- 1.1 In September, the Standards Committee considered what was then the current position regarding the future law on standards for local authority members. It also considered what arrangements might be put in place for the future. A presentation was given to the Standards Committee (followed by one for Members in general) outlining possible ways in which the future legal requirements in relation to Standards might be approached.
- 1.2 The emerging law under the Localism Bill has changed since September and is detailed within the report. This paper seeks to provide the latest position and further the debate on what type of procedures Members may wish to see in the future, noting that whatever is implemented will need to comply with the anticipated legislation.

2.0 Decision Requested

- 2.1 Members are asked to note the report and consider the way forward. This might include broadening the debate through the Issues and Ideas Working Group which was suggested in September (paragraph 11.1).

3.0 Reasons for Recommendation

- 3.1 To continue the debate on what type of procedures Members may wish to see in the future following the changes to the Standards Regime.

4.0 Wards Affected

- 4.1 All.

5.0 Local Ward Members

- 5.1 All Members are required to observe the Code of Conduct.

6.0 Policy Implications including - Carbon Reduction - Health

- 6.1 The Constitution is likely to need to be reviewed in the light of the changes to the legislation.

7.0 Financial Implications

- 7.1 None identified but issues may emerge from the Committee's discussions.

8.0 Legal Implications

- 8.1 There has been no change to the original announcement that Standards for England will be abolished. However, contrary to earlier expectations that there would be no national model Code of Conduct or requirement to have a Standards Committee, the position has now changed following debate on the Localism Bill in the House of Lords. It is now clear that there will be a need to have a Code of Conduct which complies with the Nolan Principles although it does not seem that there will be a Model Code. Local Authorities will still have a duty to promote and maintain high standards of conduct by Elected Members and to have processes for dealing with complaints.
- 8.2 The legal position is further detailed within the report.

9.0 Risk Management

- 9.1 Thorough consideration by the Standards Committee, Members in general and ultimately full Council of the legal requirements and the way in which they are to be met, will mitigate the risk of having a non-compliant system.

10.0 Background and Options

10.1 Developing Legislation

- 10.1.1 In May 2010, the Coalition Government announced its intention as part of the wide-ranging Localism Bill to scrap the current Standards regime including the Code of Conduct and complaints system, and abolish Standards for England as a regulatory body. Since then, there has been substantial debate in Parliament surrounding the Standards regime as part of the process of developing the emerging legislation.

10.1.2 During a recent debate in the House of Lords at the Report stage of the Bill, some members of the House made it clear that they would press for some form of mandatory Code to be retained and this has transpired at Third Reading stage. The Bill has now passed through the full process in both Houses, and the Third Reading (the final stage in each House) took place in the Lords on 31 October. The Lords' final amendments were approved by the House of Commons on 7 November and it is expected that Royal Assent, the very final stage which makes a Bill into law (an Act of Parliament) will in the near future enact the refined Standards provisions agreed following the 31 October debate.

10.1.3 Broadly, the current future Standards provisions in the Bill, which are now expected to be enacted, are:

- All authorities will be required to have a Code of Conduct
- The Code must be in accordance with the Nolan Principles
- The Code must include a requirement for members to register and disclose pecuniary and non pecuniary interests
- Local authorities will have to put in place a system to deal with allegations that members have breached the Code
- A local authority must appoint an Independent Person through a transparent process and, where a local authority has investigated an allegation, it must seek the Independent Person's view before reaching a decision about the allegation. It must then have regard to that view
- A person against whom a complaint is made may also seek the views of the Independent Person. Debate in the Lords commented that: *'This will ensure that if a Councillor feels victimised or pressured by a member or members of the Council or the authority, he or she can have access to the Independent Person for a view.'*
- Parish Councils must have a Code, but may adopt their principal Council's Code (thereby satisfying the obligation to ensure it meets the above requirements)
- Principal Councils are to deal with allegations of breach in relation to Parish Councillors

10.1.4 It can be seen that the main changes to anticipated requirements involve the investigation process rather than necessarily the content of the Code itself. Although there is no obligation to do so, it would be possible for authorities, if they preferred to do so rather than attempt to draft a new Code, to retain the current Model Code of Conduct, as this would meet the new requirements. Indeed, Lord Tope, speaking in the Third Reading debate, commented that his expectation was that: *"the great majority of local authorities will simply keep the Code that they already have"*.

10.1.5 The Lords' debate also contained the following comment in relation to sanctions: *"In an investigation, where a complaint was dismissed, that would be the end of the matter. Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the Standards Board regime."*

10.2 The Current Procedure on Receiving Complaints

10.2.1 In September, the Standards Committee considered the current procedure, which is set out below:

- An Initial Assessment Sub-Committee of the Standards Committee chaired by an independent member is formally convened within 4 weeks of receiving a complaint and decides whether to take no action / refer the matter for "other action"/ refer to the SfE for investigation / refer for local investigation.
- If the decision is to take "no action" the complainant has a right of appeal (within 30 days) to a Review Sub-Committee.
- Where the matter is referred for a local investigation a detailed report must be produced within 6 months. The subject member and complainant have the opportunity to comment on the draft report.
- The Investigating Officer concludes whether there has been a breach of the code on the balance of probabilities but makes no recommendation as to sanctions.
- If the report finds there has been no breach of the code a Hearings Sub-Committee of the Standards Committee is formally convened to decide whether or not to accept the recommendations.
- It may conclude that there may have been a breach in which case a separate meeting must take place to hear the evidence and determine any appropriate action.

- If the report finds that there has been a breach a Hearings Sub-Committee must be convened within 3 months. Witnesses may be called and the investigator and subject member are present and may make representations.
- There is a right of Appeal against the decision to the 1st tier Tribunal (Standards for England).
- The Hearing is in public and the outcome should be made public.

10.2.2 The detailed process is set out at Annex A together with a series of flowcharts summarising the process at Annex B.

10.3 The Future for the Complaints Process

10.3.1 As noted above, in September, briefing sessions were held for Standards Committee and Members generally, to look at a possible new system for examining complaints. It was noted that it is very important that any Code and any process of investigation of complaints under a Code is robust, has the support and respect of all Elected Members and that the integrity of the process also gives confidence to complainants and members of the public.

10.3.2 A brief overview of the suggested future process is set out in Annexes C and D as follows:

- An initial Gateway Procedure within 2 weeks to decide whether to take no action / refer to the relevant Group Leader for informal action / refer the matter for formal investigation by an external investigator
- No right of appeal or review against this initial decision
- An external investigation by a firm of Solicitors or experienced investigator with a Monitoring Officer background with a final report to be produced within 8 weeks
- The opportunity for the Subject Member and Complainant to comment on any factual inaccuracies in the report
- The report to make final determination on whether there has been a breach and the sanction to be imposed (sanctions are likely to be very limited anyway the Council probably won't be able to suspend or disqualify elected Members)
- The right of appeal by either the subject member or complainant within 14 days of receiving the final report on the findings of breach of the code (but not solely on the sanction)

- The appeal to be determined by a Panel consisting of the Leader, Chief Executive, relevant Group Leader, Independent Chair of Standards Committee advised by the Monitoring officer. No oral hearing or calling of witnesses etc all to be dealt with by written representations and consideration of the report
- No further right of appeal
- All meetings to be in private

10.3.3 It is important to stress that this process (which suggested a very different process) was intended to act as a starting point to stimulate debate. Further debate will be necessary to develop the Council's future Code and complaints process, particularly in light of the subsequent changes to the anticipated legislation.

11.0 The Way Forward

11.1 In order to take the matter forward, it is suggested that the Issues and Ideas Working Group of the Committee be convened to consider, with contributions invited from Members generally, the following matters in addition to this report -

- Existing Model Code of Conduct
- Reports submitted to the Standards Committee on 26 September 2011: Future of Standards Regime plus Chairman's letter and Political Group's responses
- Dealing with Complaints under any Voluntary Code: Presentation by Monitoring Officer (appended to this report)
- Submissions received from elected Members on the future of Standards
- Streamline Procedure as outlined in the Monitoring Officer's presentation of 26/27 September 2011.

12.0 Access to Information

12.1 The background papers relating to this report can be inspected by contacting the report writer:

Name: Julie Openshaw
 Designation: Legal Team Leader (Places) / Deputy Monitoring Officer
 Tel No: 01270 685846
 Email: julie.openshaw@cheshireeast.gov.uk