



AGENDA ITEM: 4

**STANDARDS COMMITTEE:
14 June 2012**

COUNCIL: 19 June 2012

Report of: Managing Director (People and Places) and Borough Solicitor

Contact for further information: Mrs G Rowe (Ext 5004)

(E-mail: gill.rowe@westlancs.gov.uk)

Mr T Broderick (Ext 5001)

(E-mail: terry.broderick@westlancs.gov.uk)

**SUBJECT: LOCALISM ACT 2011 – THE NEW STANDARDS REGIME – DUTY,
STANDARDS COMMITTEE AND ARRANGEMENTS**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To introduce a new Standards regime as required by the Localism Act 2011 (the Act) including establishing a Standards Committee and related arrangements.

2.0 RECOMMENDATIONS

2.1 That from 1 July 2012 the Council establish a Standards Committee, with an independent Chairman and Vice-Chairman, comprising 4 elected members appointed proportionally and the Leader of the Council be requested to nominate to the Committee only one member who is a member of the Cabinet.

2.2 That the independent Chairman and Vice Chairman be co-opted to the Committee as non-voting members, in future using the same procedure as adopted to date, but from 1 July 2012 existing Independent Members XX and YY be appointed for a term of 3 years and 2 years as Chairman and Vice Chairman respectively.

2.3 That the Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members of the Committee from 1 July 2012, using the same procedure as adopted to date, and until such appointments are made the terms of office of existing Parish representatives on the Standards Committee namely Parish Councillors Jackie Citarella, Brian Bailey and David Gallagher be extended and the Parish Councils be advised accordingly.

2.4 That the “Standards Regime Arrangements” attached as Appendix 1 be approved and the Managing Director (People and Places) work with the Parishes on these new arrangements.

- 2.5 That the updated Functions of the Standards Committee as set out in Article 9, the updated Constitution 4.1 and the updated extract from the Scheme of Delegation to the Managing Director (People and Places) attached as Appendices 2, 3 and 4 respectively be approved.
-

3.0 THE LOCALISM ACT 2011

- 3.1 The Act makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes is 1 July 2012.
- 3.2 The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members. The Council's Monitoring Officer is the Managing Director (People and Places).

4.0 STANDARDS COMMITTEE

- 4.1 The Act repeals Section 55 of the Local Government Act 2000 (the 2000 Act), which provides for the current statutory Standards Committee. So, there will be no legal requirement to have a Standards Committee. However, there will still be a need to comply with the statutory duty and deal with standards issues and case-work, so it is sensible to have a Standards Committee, it will be a normal Committee of Council, without the unique features which were conferred by the previous legislation.
- 4.2 As a result the composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply.
- 4.3 The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (see separate report on the Agenda) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. It seems that ministers are mindful to make transitional provisions which allow a Council to appoint a person as an independent person who has been an independent member within the last 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.
- 4.4 The Council can also choose to co-opt non-voting independent members to its Standards Committee as it did prior to the 2000 Act.
- 4.5 The Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of Parish Councils, but the current Parish Council representatives cease to hold office. The Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the Council,

with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

5.0 DEALING WITH MISCONDUCT COMPLAINTS

5.1 “Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by Borough Council members and by Parish Council members, and such complaints can only be dealt with in accordance with such “arrangements”. So 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 have failed to comply with the relevant Code of Conduct. The advantage is that the Act repeals the requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

5.2 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where she feels that it would be inappropriate for her to take a decision on it, for example where she has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. It would be appropriate that she make regular updates to the Standards Committee, which would enable reporting on the number and nature of complaints received and draw to the Committee’s attention areas where training or other action might avoid further complaints.

5.3 “No Breach of Code” finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, it would be reasonable to delegate the decision to take no further action to the Monitoring Officer, but with the power to refer a matter to Standards Committee if she feels appropriate. It would be sensible if copies of all

investigation reports were provided to the Independent Person to enable him/her to get an overview of current issues and pressures, and that the Monitoring Officer provide summary reports to Standards Committee for information.

5.4 “Breach of Code” finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to summary report for information to the Standards Committee.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings Sub-Committee constituted as a Sub-Committee of Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearing Sub-Committee can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

5.5 Action in response to a Hearing finding of failure to comply with Code

The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include actions set out in Appendix 1 paragraphs 5.1 to 5.7.

There is a particular difficulty in respect of Parish Councils, as the Act gives the Standards Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Sub-Committee as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from Parish Council to the Hearings Sub-Committee, so that the Hearings Sub-Committee can effectively take decisions on action on behalf of the particular Parish Council. This clearly would not be practicable given that we have 20 Parish Councils in West Lancashire

5.6 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

6.0 TRANSITIONAL ARRANGEMENTS

6.1 Regulations under the Act provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

7.1 There are no significant sustainability impacts associated with this report and, in particular no significant impact on crime and disorder. The report has links to the Sustainable Community Strategy through its work with the Parish Councils.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

8.1 There is a small budget within Legal and Democracy to handle these matters which if it proves insufficient would require that funding be made available from contingencies. Introducing new arrangements of this nature is time consuming and substantial in-house resource will be required to work on this project. There will be a substantial amount of work arising in relation to Parishes the costs of which cannot be recovered.

8.2 Allowances for independent members and Parish members are covered in the budget at £200 each, it is suggested that an additional £300 be paid to the Chairman and £100 to the Vice-Chairman of the Standards Committee from 1 July 2012. As the number of independent members has also been reduced from 5 to 2 this would then leave sufficient budget to pay a sum of £500 to the newly recruited Independent Person and £250 to the Reserve, as to which see the separate report on this Agenda.

16.0 RISK ASSESSMENT

16.1 The Council must put in place arrangements in order to comply with the requirements of the Act once relevant sections are brought into effect. Failure to

do so or to adhere to suitable arrangements may expose the Council to the risk of judicial review proceedings or Ombudsman action. Any action taken in respect of Members would be proportionate in accordance with the requirements of the Human Rights Act 1998.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix 1 – Standards Regime – Arrangements

Appendix 2 – Constitution 3.9 – Article 9 – Standards Committee

Appendix 3 – Updated Constitution 4.1

Appendix 4 – Updated Scheme of Delegation to Managing Director (People and Places)

Appendix 5 – (Council only) Standards Committee Minute

“STANDARDS REGIME ARRANGEMENTS”

1. That the Managing Director (People and Places) be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
2. That the Managing Director (People and Places) be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. She be asked to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Assessment Sub-Committee of the Standards Committee where she feels that it is inappropriate for her to take the decision, and to report quarterly to Standards Committee on the discharge of this function;
3. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Managing Director (People and Places) be asked to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;
4. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Managing Director (People and Places) in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to a Hearings Sub-Committee of the Standards Committee for local hearing;
5. That Council delegates to the Hearings Sub-Committee such powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
 - 5.1 Reporting its findings to Council [*or to the Parish Council*] for information;
 - 5.2 Recommending to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 5.3 Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 5.4 Instructing the Managing Director (People and Places) to [*or recommend that the Parish Council*] arrange training for the member;
 - 5.5 Removing [*or recommend to the Parish Council that the member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
 - 5.6 Withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - 5.7 Excluding [*or recommend that the Parish Council exclude*] the member from the Council’s offices or other premises, with the exception of meeting rooms

as necessary for attending Council, Committee and Sub-Committee meetings.