
**CHANGES TO MEMBER STANDARDS
OCCASIONED BY THE LOCALISM ACT 2011**

CHAIR OF THE STANDARDS COMMITTEE: MIKE AIREY

**Responsible Cabinet Member - Councillor Stephen Harker, Efficiency and
Resources Portfolio**

Responsible Director - Paul Wildsmith, Director of Resources

SUMMARY REPORT

Purpose of Report

1. The purpose of this report is to advise Members of the impact of the Localism Act 2011 on local government standards and to ask members to approve changes that will need to be made locally in order to comply with the legislation.

Summary

2. The Localism Act 2011 introduces significant changes to local government standards. As a result the Council needs to make changes to the Council's own procedures for dealing with complaints against members.
3. This report sets out the relevant parts of the legislation relating local government standards and the proposed changes that Council is asked to consider.
4. The Council will need to have the new arrangements in place by 1 July 2012 in order to comply with the date set for the provisions to come into force.
5. The changes required include adopting a new code of conduct for members, deciding how the duty to promote high standards of member conduct will be discharged locally, appointing to the new statutory position of 'independent person' and revising the procedure for handling complaints against members.
6. The Standards Committee has been involved in drawing up the proposals and invites the Council to approve them.

Recommendation

7. That Members adopt the revised Code of Conduct for members, as set out in **Appendix 1** of the report, to take effect from 1 July 2012.

8. That Members agree to continue to have a Standards Committee, which shall be charged with the promotion of high standards of conduct by members.
9. That the membership of the Standards Committee shall be comprised of 2 Independent Members, 3 Borough Council Members and 3 Parish Council Members, with effect from 1 July 2012
10. That Joanne Kidd shall be appointed to the post of Independent Person with effect from 1 July 2012
11. That the Procedure for Handling Complaints against Members, attached to this report at **Appendix 2**, be adopted by this Council with effect from 1 July 2012

Reasons

12. The recommendations are supported by the following reasons:
 - (a) To enable the Authority to comply with the Localism Act 2011.
 - (b) To enable the Authority to have an effective system of internal control to promote the good conduct of members in the Darlington area and to deal with complaints made against members
 - (c) To help build and improve public trust in the organisation.

Catherine Whitehead
Assistant Director, Resources

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S17 Crime and Disorder	There are no implications for Crime and Disorder
Health and Well Being	There are no implications for Health and Wellbeing
Carbon Impact	There are no specific issues in relation to carbon impact.
Diversity	There are no specific issues in relation to diversity
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	The report does not propose amendments to the Council's budget and policy framework. The report is required to be referred to Council.
Key Decision	This is not an executive decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The ethical agenda and the promotion of trust and confidence in the organisation support all of the objectives of the Community Strategy in so far as they facilitate public involvement in decision making. This is specifically addressed in the national indicator NI 4.
Efficiency	No additional staff resources are required, the streamlined complaints handling proposals should reduce some work.

MAIN REPORT

Information and Analysis

The Localism Act

13. The main changes to local government standards brought about by the Localism Act are as follows:
- (a) The Standards Board for England (SfE) has been abolished (as of 1.4.12). None of the functions of the SfE have transferred to other bodies.
 - (b) The duty on local authorities to promote and maintain high standards of conduct by members and co-opted members will continue.
 - (c) The requirement on local authorities to have a code of conduct for members will remain (the Bill had proposed to scrap this duty).
 - (d) The national model code of conduct will go and local authorities will need to adopt a replacement code of conduct. The content of the code of conduct can be determined locally but must be consistent with prescribed 'Nolan' principles (selflessness, integrity, objectivity, accountability, openness, honesty and leadership). The code will need to include obligations relating to registration and disclosure of pecuniary and non-pecuniary interests.
 - (e) Monitoring Officers will be required to establish and maintain a register of member's interests (to include both Borough and Parish members).
 - (f) A new summary offence will be created for members who, without reasonable excuse, fail to register a financial or other interest, or fail to disclose particular interests before taking part in local authority business. The offence is punishable by fine and or disqualification for up to 5 years.
 - (g) Local authorities are no longer required to have a standards committee
 - (h) A local complaints function must be in place to deal with allegations about of breaches of the code of conduct (including from Parish Councils).
 - (i) Local authorities will be required to appoint at least one 'independent person' to play a role in decisions made about complaints against members.

Matters to be addressed

14. There are a number of issues that need to be decided by Council in order to comply with the Localism Act :
- (a) The adoption of a revised code of conduct that complies with the Localism Act.
 - (b) Adopting arrangements that will comply with the duty promote and maintain high standards of conduct by members.

- (c) Agreeing the arrangements will be put in place for dealing with member complaints and the role and appointment of the 'independent person'.
- (d) The adoption of a revised procedure for dealing with complaints against members.

15. These issues are considered in more detail below

Code of Conduct

- 16. When the provisions of the Act concerning member standards come into force on 1 July 2012 the Code of Conduct adopted by this Council under the Local Government Act 2000 will cease to have effect and undertakings given by Members to comply with the Code will also cease to have effect.
- 17. The Act requires local authorities to adopt a new or revised code of conduct in place of the former code. The code of conduct adopted is required to be consistent with the seven principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership). It must also set out the rules that the authority wants to put in place requiring members to register and disclose pecuniary and non-pecuniary interests.
- 18. One of the functions of the Standards Committee is to recommend to Council the adoption of a Code of Conduct for Members. The Local Government Association (LGA) has been working on a draft Code of Conduct, unfortunately this was not available when Members of the Standards Committee met on 18 April 2012. There had been delays in publication because of differing views at the LGA about the form that it should take.
- 19. On the 11 April 2012 Bob Neil MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government circulated to local authorities an 'illustrative text' of what was described as a 'lighter touch Code' that local authorities could consider adopting. This was approximately one and a half pages in length (compared with the current 10 page Code). The Standards Committee considered the draft but found to be inadequate as it lacked sufficient detail.
- 20. The Localism Act does not define what constitutes a pecuniary interest, this has been left to regulations. Unfortunately the regulations were not available at the time the Standards Committee met on 18 April 2012. The Department for Communities and Local Government had advised that they would be laid before Parliament after the Easter recess. They are still unavailable at the time of writing this report.
- 21. The Standards Committee were mindful that despite these difficulties a revised Code needs to be in place for 1 July 2012 (which means that it will need to be adopted by Council before this date) and Members made aware of the changes. To achieve this, the Standards Committee therefore decided that the current Code will be retained so far as the general obligations (set out in Part 1 of the Code) and that Part 2 of the Code (which deals with interests) should be revised to reflect the changes to interests.

22. A revised version of the Code of Conduct is attached as **Appendix 1**.
23. The main changes are as follows:
 - (a) The Ten General Principles (recommended by the Standards Board) are replaced with the 7 Principles of Public Life (the Nolan Principles).
 - (b) In Part 2 the provisions dealing with personal and prejudicial interests have been deleted. What were formerly personal interests have been separated out into non pecuniary and pecuniary interests.
24. We are still waiting for the regulations that will define what constitutes a pecuniary interest. Because of this it is possible that further changes may be needed to the definition set out in the Code if the definition of pecuniary interest in the regulations differs from that in the Code. If this happens then the Code will be subject to the changes that the regulations make and any requirements relating to pecuniary interests in the regulations will take precedence to those set out in the Code. Members and the Standards Committee will be kept advised of any subsequent developments in this area.
25. Apart from the Borough Council, parish councils will also need to adopt a revised Code of Conduct. They are being advised of the current position and the approach of the Borough Council. It is hoped that they may also choose to adopt a similar Code of Conduct before 1 July 2012.
26. The Localism Act requires the Council to publicise the adoption of a replacement code of conduct. The intention is that an article will be written for the June edition of Darlington Together and the website will be used to highlight the changes. Separate to this member and staff training sessions will be held.
27. The recommendation is that Council adopts the Code of Conduct as set out at **Appendix 1** of this report.

Arrangements to promote high standards of conduct by members

28. The duty on local authorities to promote and maintain high standards of conduct by members and co-opted members remains and is not affected by the Localism Act.
29. The way that this has been discharged up to now has been through the work undertaken by the Standards Committee. This model does not have to be retained in future as the statutory requirement to have a Standards Committee will cease. There is no prescription in the Localism Act about how the role should be discharged. It could for instance be left to an officer (the most obvious one being the Monitoring Officer) to take on the role. This and other alternatives were considered, but the view of the Standards Committee, from discussions with other members and senior officers (including the Chief Officers Executive) is that the Standards Committee should be retained for now.
30. There are a number of reasons for this recommendation:
 - (a) The Standards Committee provides a visible focus as the body with lead responsibility for promoting and maintaining high standards of conduct.

- (b) The Committee functions well, is experienced in dealing with issues relating to member standards and has discharged the function of dealing with member complaints effectively.
 - (c) The continuance of such a Committee is helpful in providing a pool of members with experience of standards who can carry out the role of hearing a member complaint. The membership of the committee is drawn from 3 constituent groups, independent members (3), Borough Council members (5) and parish council members (3). The independent members are not elected politicians and they have a helpful external viewpoint, while the elected borough and parish members contribute first hand experience of the pressures and demands of political office and are well placed to judge the conduct of members.
 - (d) The existence of the Committee also allows some distance to be placed from officers when member complaints are dealt with.
 - (e) Retaining the Committee would still allow the Council to review other models at a later date, but with better insight drawn from the experience of other Councils
31. If the Committee is retained it is suggested that the membership should be reduced. Under the previous legislation the function and membership of the standards committee was highly prescriptive. We will have greater freedom to determine the function and membership after 1 July 2012.
- (a) It is proposed that the complaints handling process should be simplified and streamlined (see below). It is proposed that the current right to have a decision not to investigate a complaint reviewed by a separately composed sub committee is scrapped. By scrapping the review sub committee we could avoid the need to have additional members in reserve who had not been involved in the assessment sub committee.
 - (b) Membership - currently we have 3 independent members, 5 borough council members and 3 parish council members. The proposal is that the committee should be comprised of a slightly reduced membership, with 2 independent members, 5 borough councillors and 3 parish councillors. Independent and parish council members currently receive £802 and there would be a slight saving on cost by the reduction of 1 Independent Member. Balanced against this, it is proposed that the 'independent person'
32. The recommendation is that the Standards Committee is retained but that the membership is reduced to 2 independent members, 5 borough council members and 3 parish council members.

Member Complaints and the role of the independent person

33. The Localism Act has introduced a requirement that local authorities appoint an 'Independent Person'. The legislation requires that the views of the independent person are sought and taken into account of before any decision is made in respect of a complaint which has been investigated. The independent person may also be contacted by the member being investigated and discuss the complaint and give their views.

34. The independent person cannot be an officer a member, or co opted member of the Council. For this reason they will not formally sit as a member of the Standards Committee but will play a separate and distinctive (independent) role, receiving papers and being asked to give views, but with the decisions still being made by the members of the Standards Committee.
35. It is envisaged that the Independent Person will receive all of the Standards Committee papers and be invited to attend full meetings of the Committee. This will not be as a voting member, aside of this they will be able to participate fully in the meeting. With regard to complaints the independent person will receive papers and will be asked for their views about the way that each complaint should be dealt with, either in writing or orally to the monitoring officer. The views will be fed into the Assessment Sub Committee, but it is not anticipated that the independent person will attend the Sub Committee. In cases when an investigation has been undertaken in a similar way the independent person will receive a copy of the investigation report and be invited to give their views on whether the matter should proceed to a hearing. For complaints that proceed to a full hearing the independent person will attend the hearing and be invited to ask questions and give an opinion at the end. They will not however sit with the sub committee members or join them when they retire to consider their decision. The independent person will be able to contact or be contacted by the member complained of at any stage of the process, but they will not have any investigatory role.
36. The independent person will not be a member of the authority and remuneration of the independent person does not therefore come within the scheme of members allowances and can be determined without reference to the independent remuneration panel. It is suggested that the independent person receives the same annual allowance as an independent or parish council member of the Standards Committee, currently £802 per annum.
37. The Localism Act requires the appointment of the 'independent person' to be made after a vacancy has been advertised and following a decision of the majority of members of council.
38. The position has been advertised in the Darlington and Stockton Times, in the northern echo jobs website and on the Councils website. In addition a number of prominent local persons been advised of the position. The closing date for was the 2 April 2012, in total 22 applications were received, of those 5 were shortlisted for interview.
39. The candidates were interviewed on 23 April 2012 and the 1 May 2012 by a selection panel comprising the Chair of the Standards Committee, the Leader of the Council, the Deputy Leader and the Leader of the main opposition party. The Monitoring Officer was also present.
40. The selection panel decided to offer the position to Joanne Kidd subject to the approval by Council. Joanne Kidd is a barrister and practises from Chambers in Middlesbrough. She is also currently an Independent Member of the Standards Committee of Middlesbrough Borough Council and has chaired a number of hearing panels that have been convened to consider allegations of complaints against members.
41. The recommendation is that Joanne Kidd is offered the position of Independent Person

Changes to the Procedure for dealing with complaints against members

42. The Procedure for Handling Complaints against Members has been modified and where possible simplified to reflect the changes that will be introduced after the 1 July 2012.
43. The revised procedure, which is set out at **Appendix 2** of this report has been modified to include the role played by the Independent Person. The right to have a review of complaints decisions made by the Assessment Sub Committee has been removed. This has been a statutory requirement under the Local Government Act 2000, but is felt to be over bureaucratic and will help in streamlining the procedure. References to the Standards Board for England, guidance and appeal rights to the First Tier Tribunal (all of which have been abolished by the Localism Act) have been removed.
44. The recommendation is that the Procedure for Handling Complaints Against Members, set out at **Appendix 2**, is approved by Members and that it will come into force from 1 July 2012

Roll out of the changes

45. From 1 July 2012 there are a number of significant changes will have taken place. A new code of conduct will replace the current code and there will be a number of additional changes to the way in which member complaints will be dealt with.
46. Training and publicity will be important to ensure that members, staff and the public are aware of the changes and that will be introduced. The annual training for members on the code of conduct will be rolled out in May and members will be encouraged to attend the sessions at the early part of the year rather than later so that they will be fully aware of the changes.
47. The Localism Act requires the Council to publicise the adoption of a replacement code of conduct. The intention is that an article will be written for the July edition of Darlington Together and the website will be used to highlight the changes.
48. Parish Councils have already been advised of the implications of the Localism Act and that they will need to adopt a replacement code of conduct by 1 July 2012. They will receive a copy of this report and be advised to adopt the same code of conduct. Specific training sessions will also be held for parish council members and clerks.

Outcome of Consultation

49. The details set out in this report (with the exception of the appointment of the Independent Person) were previously considered by the members of the Standards Committee at its meeting on 18 April 2012 and the proposed changes reflect the comments made by members of the Committee made at that time.