

**Open Report on behalf of the Executive Director Performance and Governance**

Report to:	<b>County Council</b>
Date:	<b>18 May 2012</b>
Subject:	<b>New Standards Arrangements</b>

**Summary:**

This report summarises changes in the national Standards regime made by the Localism Act 2011 that will take effect from 1 July 2012.

It proposes adoption of a new, much simplified, Code of Conduct and local arrangements for dealing with complaints alleging breach of that Code together with appropriate delegations and oversight.

It also summarises information currently available concerning 'Disclosable Pecuniary Interests' and highlights that the Council's arrangements for these cannot be finalised until national Regulations are made.

Initial proposals and recommendations were developed in consultation with Standards Committee, and discussed at a joint training meeting of Audit Committee and Standards Committee. Further proposals were developed with Group Leaders and they were provided with an opportunity to comment on the final draft of this report.

For clarity, the Local Arrangements proposed in this report only apply to complaints alleging breach of the Code of Conduct (a 'standards complaint'). Complaints alleging more serious issues such as alleged criminal offences are dealt with by other means such as referral to the Police.

**Recommendation(s):**

1. That the Code of Conduct at Appendix A to this report be adopted with effect from 1 July 2012.
2. That oversight of Standards arrangements becomes a function of the Audit Committee.
3. That the Monitoring Officer (in consultation with the Group Leaders) be authorised to make all necessary arrangements for the interview, and selection of 1 Independent person and 2 reserve Independent persons for appointment at the next suitable Council meeting.

4. That the Monitoring Officer (in consultation with the Group Leaders) be authorised to set a retainer for the Independent Person and pay expenses at rates equivalent to the Members' Allowances Scheme.
5. That the Council's local arrangements for dealing with complaints of failure to comply with the Code of Conduct, after 1 July 2012, be as set out in Appendix B to this report.
6. That the power to grant dispensations to disclosing pecuniary interests be granted to the Monitoring Officer.
7. That the term of existing Independent Members of the Standards Committee is extended to 1 July 2012 if no complaints are outstanding at that date or 1 September 2012 if there are any standards complaints outstanding on 1 July 2012.
8. That the Council's Constitution be modified accordingly.

## **1. Background**

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors that take effect from 1 July 2012. Some changes have already been implemented, such as abolition of Standards for England.

This report describes the changes due in July and recommends actions for the Council to implement the new regime.

**Duty to promote and maintain high standards of conduct.** The Council remains under a duty to promote and maintain high standards of conduct for its elected members and co-opted members. Local Arrangements recommended in Appendix B recognise that the primary responsibility for high standards of conduct falls on Members themselves and also recognises that Group Leaders wish to demonstrate their commitment to high standards of conduct by playing a leading role.

**Standards Committees.** Under the Act there is no longer a requirement for a Council to have a stand-alone Standards Committee. In view of the historic low numbers of standards complaints it is recommended that the Council does not set up a 'new style' Standards Committee but extends the role of Audit Committee to include oversight of Standards including an annual review.

**Code of Conduct.** The Council is required to adopt a Code of Conduct. No format is prescribed but the law does require that any adopted Code must:

- when viewed as a whole, be consistent with the following 7 principles:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
  
- contain appropriate requirements for the registration and disclosure of certain interests.

The Local Government Association have produced and recommended to Councils a form of Code covering the requirements of the Act and this is annexed to this report. The Council is free to amend this Code or to produce its own but this is the form being proposed for adoption by all the Lincolnshire principal authorities and as such it is recommended for adoption without change by the Council in Appendix A.

There is no requirement for individual members to 'sign up' to the Code of Conduct as they will be bound by it through being a Member of the Council.

**Local Arrangements.** There is no prescribed form for dealing with any complaints arising under the Code. The Act requires the Council to adopt arrangements for dealing with such complaints and complaints can then only lawfully be dealt with in accordance with those arrangements. Draft Local Arrangements recommended are in Appendix B.

**Decisions on whether to investigate** – the new flexibility allows the Council to delegate the decision to investigate as it sees appropriate. The Council's Constitution only provides for delegation to individual Committees, individual Members of the Executive or individual Officers, Legislation provides that Standards is not an Executive function. That means the options available are to delegate to an Officer or to a Committee. This report recommends delegating to the Monitoring Officer (MO). Local Arrangements proposed also require the MO to inform and consult the relevant Group Leader. The MO may consult the Independent Person (please see further information below about the Independent Person).

It is clear that the new regime envisages investigations to be very much the exception and provide the opportunity for the Council to seek to resolve complaints informally, before taking a decision on whether a complaint merits formal investigation.

Local Arrangements proposed envisage that complaints alleging breach of the code that do not pose a serious risk to the Council's reputation are dealt with by seeking an informal resolution without a formal investigation or hearing.

**Local Hearings.** Investigations finding breach of the Code of Conduct will be referred to a Local Hearing. Local Arrangements provide for that hearing to be arranged by the Monitoring Officer and consist of at least three Members drawn

from Audit Committee that represent at least two political groups. The normal rules around disclosure of interests will apply.

**Sanctions** The Act does not prescribe sanctions for breach of the Code. The range of actions in such circumstances is limited. In reality most actions available are grounded in the political process (e.g. removal from a Committee). As such, Local Arrangements recommended provide that actions are to be determined by the relevant Group Leader following recommendation from a Local Hearing. Modified provisions are made for dealing with standards complaints against Members who are not part of a Group and for standards complaints against a Group Leader.

**Appeal** - There is no requirement to put in place any mechanism for appeal against hearing decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, if it were taken improperly or if it sought to impose a sanction there was no power to impose. Local Arrangements proposed do not provide for any appeals.

**Independent Persons.** The arrangements adopted by the Council must include provision for the appointment by the Council of at least 1 Independent Person (IP) who:

- MUST be formally consulted by the authority before it makes a finding, arising from a formal investigation, as to whether or not a member has failed to comply with the Code of Conduct. Local arrangements recommended include invitation to the Independent Person to observe any Local Hearing.
- May be consulted by the authority in respect of a standards complaint at any other stage.
- May be consulted by a member or co-opted member against who a complaint has been made.

The Act gives discretion to Councils as to how many IP's it might wish to appoint but provides that EACH IP must be consulted before any decision is taken on a complaint which has been investigated. It is therefore recommended that this Council; appoints 1 IP with 2 reserves able to step in at short notice without the need to re-advertise if they are needed.

The IP is not a Member of the Council so they are not eligible to receive a Members allowance. It is therefore recommended that the IP is paid a small retainer to be set annually by the Monitoring Officer in consultation with the Group Leaders and paid expenses equivalent to Members.

IP's must be selected following a formal advertisement and interview process and can only be appointed by Full Council. Restrictions apply to appointment of those who are, or have been within the last five years, elected or co-opted Members or who are a relative or close friend of such a person (as defined). Transitional arrangements have been promised by government but have not yet been published. It is recommended that appointment is delegated to the Monitoring Officer in consultation with the Group Leaders.

**Transitional arrangements.** Any complaint received prior to 1 July 2012 (the date on which the new arrangements begin) must be handled under the old arrangements but MUST be fully completed by 1 September 2012. It is therefore recommended to extend the term of Independent Members of Standards Committee until 1 July 2012. If no complaints are outstanding at that date or 1 September 2012 if there are any complaints outstanding on 1 July. Those Members would only be involved in 'old style' complaints.

## **MEMBERS INTERESTS**

The Localism Act also changes provisions regarding Members' Interests. The key change is to abolish the concepts of personal and personal & prejudicial interests and replace them with 'Disclosable Pecuniary Interests' (DPI's). Unfortunately, detailed Regulations defining DPIs have not yet been published so it is not possible to provide full recommendations at this time. It is likely that regulations will define DPIs to include interests of spouses, civil partners etc.

Failure to disclose a DPI can constitute a criminal offence to be investigated by the Police.

The Act requires the Council's code to contain appropriate requirements for the registration and disclosure of interests. It is open to the Council to adopt a Code that requires registration and disclosure of other pecuniary and non-pecuniary interests but no recommendations are made in respect of this.

Although, as now, registration is the responsibility of individual Members, these changes are likely to be significant and of concern to Members as non-disclosure is a criminal offence. The Council will arrange training and support for Members through the changes and beyond.

**Register of Members Interests.** The Monitoring Officer is required to maintain a register of interests which must be available for inspection and on the council's website.

Each elected or co-opted Member must register DPI's within 28 days of becoming a Member – failure to register is made a criminal offence but would not prevent the Member from acting as a Member. The Register may be updated if necessary.

The Act requires that a Member only needs to disclose the existence and nature of a DPI at a meeting IF they have not by that point either already registered that interest in the Register of Interests or if they have formally requested the Monitoring Officer to register it.

So at a meeting, a Member who has already registered a DPI in the Register of Members interests or notified the MO requesting such registration, need NOT declare the existence or nature of the interests.

A new DPI may have arisen since the Register was compiled or there may be circumstances that the Member did not recognise as a DPI until it arises at a meeting. In such cases the Member must make a disclosure at the meeting and

must notify the MO formally of that interest so that it can go on the Register of Interests.

There is no legal requirement for a member having a DPI to leave the meeting. They must however take no part in discussion or voting. ('Discussion' is likely to be wider than the current phrase 'debate' and further clarification is awaited.)

There are provisions, dealt with later in this report, allowing members to apply for dispensations so they can speak and vote in certain circumstances notwithstanding the existence of a DPI (previously registered or not).

### **Decisions by a single Member**

Where a decision is to be made by a single member under the Council's constitutional arrangements the Act provides that, when a member becomes aware that they will have to deal with a matter and that they have a DPI in that matter:

Unless the DPI is already entered on the register of members interests or the member has notified the MO of the interest and the need to register it, they have 28 days to notify the MO that they have a DPI and they must take no action in respect to that matter other than to refer it to another person or body to take the decision.

An example of this would be where a Member on the Executive has a DPI that prevents them deciding and instead refers it to the Executive.

### **Sensitive Interests**

The Act effectively repeats existing provisions where a member is concerned that disclosure of the detail of an interest at a meeting or in the register of interests would lead to the member or a person connected with them being subject to violence or intimidation. In such cases they may request the MO to agree the matter is a 'sensitive interest'.

If that is agreed, the publicly available version of the register of interests can exclude the relevant detail or if the DPI is not registered only the existence of the DPI needs to be disclosed at the meeting not the nature of it.

### **Dispensations**

These rules have changed substantially. Dispensations under the new rules will be able to be granted only in the following circumstances:

- that so many members on the decision-making body have DPI's in a matter that it would 'impede the transaction of the business' – i.e. that the decision-making body would be inquorate.
- that without the dispensation the representation of the different political groups on the decision-making body would be so upset as to alter the outcome of any vote on a matter.

- that the authority considers that the dispensation is in the interests of persons living in the authority's area.
- that, without dispensation, no member of the Executive would be able to participate.
- the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

The power to grant dispensations can be delegated to a Standards committee or a sub-committee or to the Monitoring Officer. Different delegations could be made for each of the reasons above. It is recommended that all dispensations be delegated to the Monitoring Officer as that would enable dispensations to be granted at short notice if necessary.

## **2. Conclusion**

Recommendations set out in this report strike a balance between meeting the Council's duty to promote and maintain high standards of conduct for elected and co-opted Members of the Council and simplifying the complex regime currently operating.

### **3. Legal Comments:**

The legal issues to be taken into account in the making of these decisions, which fall to full council to determine, are set out in the report

### **4. Resource Comments:**

There are no significant financial implications

## **5. Consultation**

### **a) Has Local Member Been Consulted?**

N/A

### **b) Has Executive Councillor Been Consulted?**

Yes

### **c) Scrutiny Comments**

No Scrutiny but discussions with Standards Committee and Audit Committee have been taken into account.

#### **d) Policy Proofing Actions Required**

None

#### **6. Appendices**

These are listed below and attached at the back of the report
Appendix A – Lincolnshire County Council Members’ Code of Conduct
Appendix B – Local Arrangements for dealing with standards complaints

#### **7. Background Papers**

Document title	Where the document can be viewed
Guidance	County Offices, Newland, Lincoln

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