

# WILTSHIRE COUNCIL

## COUNCIL

15 May 2012

---

### LOCALISM ACT 2011 - NEW STANDARDS FRAMEWORK

#### Purpose of Report

1. This report:
  - a. informs council of the work undertaken so far in preparing for the implementation of the new standards framework under the Localism Act 2011.
  - b. invites council to consider the Standards Committee's proposals for implementation of the new framework in Wiltshire.

#### Background

2. The Localism Act 2011 ('the Act') introduces fundamental changes to the regulatory framework for standards of conduct of elected and co-opted members of relevant authorities, including principal councils and parish, town and city councils ('parish councils').
3. The key changes are summarised in a briefing note which was circulated to Wiltshire Councillors and parish council clerks in December. A copy of the briefing note is attached at Appendix A.
4. The new standards framework is due to be implemented on 1 July 2012.
5. The proposals in this report have been developed by the Standards Committee with the assistance of its Standards Task and Finish Group, and in consultation with the Constitution Focus Group, Group Leaders, and the Member Support in the Locality Task Group. Members have also contributed to discussions on the new framework at a members' seminar on the Localism Act on 19 and 23 April 2012.
6. Parish councils have been informed of the progress of this work through the parish newsletter.

7. Regulations dealing with the registration and disclosure of pecuniary interests and the transitional arrangements are awaited.

## **Main Considerations**

### **Code of Conduct**

8. The Act imposes a general duty on relevant authorities to promote and maintain high standards of conduct. In discharging this duty the council must, in particular, adopt a code of conduct dealing with the conduct that is expected of members and co-opted members of the council when they are acting in that capacity.
9. Parish councils may satisfy this duty by adopting their principal authority's code.
10. The council's new code of conduct must, when viewed as a whole, be consistent with the following principles:
  - selflessness;
  - integrity;
  - objectivity;
  - accountability;
  - openness;
  - honesty;
  - leadership
11. Regulations defining what pecuniary interests must be registered and disclosed are due to be issued. The council's code may include such other pecuniary and non-pecuniary interests as the council considers appropriate for registration and disclosure. Until these regulations are available it is not possible to complete this part of the code of conduct, or determine what interests need to be included in the members' register of interests, which, as Monitoring Officer, I have a duty to maintain, both for members of this council and for parish councils.
12. In preparing a draft code for the council to consider the Standards Committee has sought to provide a document which meets the requirements of the Act and is:
  - clear and simple
  - easy to apply
  - proportionate
  - fit for the purpose of promoting and maintaining high standards of conduct

13. The Local Government Association (LGA) has worked with a range of stakeholder organisations to produce a short outcome-focused template code to assist authorities in drawing up their own code. A copy is attached at Appendix B. The code is set out on the first page; the second page is a guidance note.
14. The Department for Communities and Local Government (DCLG) has produced an illustrative text that councils can, if they choose, use as a basis for their new code of conduct. This is attached at Appendix C.
15. The Standards Committee has approved a draft code for initial consideration by council, as attached at Appendix D. This draft has been prepared with the aims set out in paragraph 12 above in mind. It draws on the DCLG's illustrative text, and, to a lesser extent the LGA's template code.
16. The draft code, in its preamble, states the 7 principles of conduct from the Act and refers to the Role and Responsibilities of Councillors (Part 12 of the Constitution) and the Council's Behaviours Framework. The substantive part of the code then sets out the conduct expected of members when acting in that capacity. The last part deals with the registration and disclosure of interests, and will need to be reviewed when the regulations on interests are issued.
17. The Members in the Locality Task Group have reviewed the proposals for the new standards framework. Their views are set out in the notes of their meeting on 26 April 2012, attached at Appendix E. In summary, they consider that the DCLG text should be adopted as it stands. The view of the Standards Committee, on advice from myself as monitoring officer, is that the DCLG text requires further provision to give the clarity and enforceability necessary to provide an effective code that enables the council to discharge its duty to promote and maintain high standards of conduct and generate public confidence in local government.
18. Parish councils are strongly encouraged to adopt Wiltshire Council's code, save for those parts shown in square brackets which relate solely to Wiltshire Council. This will ensure consistency in promoting high standards of conduct across Wiltshire and in dealing with complaints under the code.
19. **Council is requested to approve the draft code of conduct at Appendix D for consultation with Wiltshire Councillors and Wiltshire Parish Councillors before final approval is sought at the next meeting of council on 26 June 2012.**

#### **Arrangements for Dealing with Code of Conduct Complaints**

20. Relevant authorities, other than parish councils, must put in place arrangements for investigating and determining complaints under the code of conduct and deciding the actions that may be taken if there is found to be a breach of the code.
21. Complaints against members of parish councils are to be dealt with under the arrangements adopted by their principal council. However, any consequential action

in the event of a breach of the code will rest with the parish council.

22. The Standards Committee's proposed procedure for dealing with complaints is attached at Appendix F. A flow-chart summary is included within this document at Annex 2.

23. The procedure aims to be fair, efficient and proportionate. Key features include:

- provision for informal resolution by the Monitoring Officer before a formal complaint is lodged;
- strict time limit of 20 working days for bringing a complaint;
- complaint details sent to the member upon receipt with the opportunity to provide a written response for initial assessment;
- initial assessment by the Monitoring Officer, after consultation with the independent person.
- right of review for both parties at the initial assessment stage and for the complainant following investigation;
- strong emphasis on exploring alternative resolution;
- independent person available for member to consult throughout process;
- confidentiality maintained until determined otherwise;
- shorter process than under the current statutory regime. We are aiming for cases to be completed within 3 ½ months - 20 working days to initial assessment - 30 working days for investigation and 20 working days to hearing). This excludes requests for extension by the member, time spent on reviews and exploring alternative resolution.
- no right of appeal against final determination by the Hearing Sub-Committee;
- provision for the procedure to be reviewed in the light of experience.

24. Annex 1 of the proposed procedure includes a range of possible sanctions that the council may wish to adopt. These are more limited than the sanctions available under the current statutory regime.

25. Sanctions for parish councillors may only be in the form of recommendations to the relevant parish council.

26. **Council is asked to approve the arrangements for dealing with code of conduct complaints, as set out in Appendix F for consultation with Wiltshire Councillors and Wiltshire Parish Councillors before final approval is sought at the next meeting of council on 26 June 2012.**

### **Appointment of Independent Persons**

27. The council must appoint at least one independent person whose views must be sought and taken into account before the council makes a decision on an allegation it has decided to investigate. The views of the independent person may also be sought on other allegations, and by a member who is the subject of an allegation.
28. The Standards Committee has drawn up a job description and person specification for the independent person, based on the statutory requirements. A copy is attached at Appendix G.
29. The proposed arrangements for dealing with complaints envisage that for each complaint one independent person will be allocated to advise and assist the Monitoring Officer and the Hearing Sub-Committee and the other will be available for consultation by the member. This will avoid any conflict of interest between these roles. Council is recommended to appoint 3 independent persons to ensure that there is sufficient cover available to ensure that the timescales set in the complaints process can be met.
30. The Standards Committee proposes that independent persons will normally be appointed for a period of 4 years, but that initial appointments should be staggered to provide for continuity of knowledge and experience. Therefore, one will be appointed for 2 years, one for 3 years and the other for 4 years.
31. **Council is, therefore, asked:**
- a. to approve the job description and specification for the independent person at Appendix G.**
  - b. to authorise the Monitoring Officer, in consultation with the chairman of the new standards committee and/or the chairman of the existing Standards Committee, to take the necessary steps to secure the appointment of 3 independent persons in accordance with paragraph 30 above.**
  - c. to seek the advice of the Independent Remuneration Panel on an appropriate rate of remuneration for the independent person and to bring this back to council for decision on 26 June 2012.**

## Standards Committee

32. Under the new provisions there is no longer a statutory requirement to have a standards committee. It is for the council to decide whether it wishes to have one. Unlike the current statutory standards committee any new standards committee will be an ordinary committee of the council and will be subject to the rules on political proportionality. The council may appoint co-opted members but these will be non-voting.
33. The Standards Committee recommends that the council establishes a standards committee to discharge its obligations under the new legislation and continue its current wider role. Proposed terms of reference for a new standards committee are set out at Appendix H. These provide for:
- a politically balanced committee of 13 elected members (excluding the Leader or a Cabinet Member) and up to 8 co-opted non-voting members, 50% of whom are to be parish council representatives.
  - discharge of the council's functions under the new standards framework, and additional responsibilities, including oversight of: the constitution; corporate complaints handling; Ombudsman investigations; and the council's whistleblowing policy.
  - the appointment of sub-committees which are not subject to political balance requirements, including a hearing sub-committee and a review sub-committee, as required under the above arrangements, and a dispensation sub-committee to grant dispensations under the Act.
34. In order to ensure continuity of knowledge and experience it is proposed that initial appointments of co-opted members will be made as follows:
- |                                  |         |
|----------------------------------|---------|
| 2 parish council representatives | 3 years |
| 2 independent co-opted members   | 3 years |
| 2 parish council representatives | 4 years |
| 2 independent co-opted members   | 4 years |
- The arrangements for selection will be determined by the Monitoring Officer in consultation with the chairman of the new standards committee.
35. It will be for parish councils to decide whether they should have a standards committee.
36. Details of the costs associated with establishing a new standards committee compared with the current arrangements are covered under the Financial

Implications section at paragraph 52.

**37. Council is, therefore asked:**

- a. to agree to establish a standards committee with terms of reference as set out in Appendix H.**
- b. to authorise the Monitoring Officer, in consultation with the chairman of the new standards committee, to agree the arrangements for selection of co-opted members in accordance with paragraph 34 above, for appointment by council at its meeting on 26 June 2012.**

**Register of Interests**

38. As Monitoring Officer I am required under the new legislation to establish and maintain a register of members' interests for members of Wiltshire Council and Wiltshire Parish Councils. These must be available for inspection at Wiltshire Council's offices, on its web-site, and, for parish councillors, on their parish council's web-site if it has one.
39. Work is in hand to prepare for the implementation of these arrangements, though it is not possible to finalise the form of register until the regulations on interests have been published.

**Dispensations**

40. Relevant authorities may, on receipt of a written request, grant dispensations for up to 4 years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. The grounds on which a dispensation may be granted are wider than at present, and are set out at paragraph 32 of the briefing note at Appendix A.
41. It is proposed that this function is delegated to a sub-committee of the standards committee, as provided for in the terms of reference at Appendix H.
42. Parish councils will be responsible for granting dispensations for their own councillors.

**Transitional Arrangements**

43. The arrangements for moving from the current system to the new will be governed by transitional regulations which are yet to be published. Subject to what the new regulations say, it will be necessary to retain the existing Standards Committee until its responsibilities for dealing with complaints under the present standards regime

have ceased.

- 44. The council is asked, therefore, to retain the current Standards Committee, including the current membership, for such a further period as is necessary to discharge its statutory obligations**

### **Support to Parish Councils in Implementing the new arrangements**

45. Parish councils are being kept informed of progress on these matters, primarily through the Parish Newsletter, and via parish clerks.
46. Subject to council's approval, parish councils will be consulted on the draft code of conduct at Appendix D and the arrangements for dealing with complaints before the council's final approval is sought on 26 June 2012.
47. It is proposed to hold briefing sessions on the new standards framework for all councillors before the council's meeting in June, subject to the regulations on interests being available.
- 48. Council is asked to agree to consult parish councils on the council's proposals for the implementation of the new standards framework in Wiltshire before a final decision is made by council on 26 June 2012.**

### **Environmental and Climate Considerations**

49. None arising from this report.

### **Equalities Impact**

50. The proposals contained in this report are consistent with the council's obligations under the Equality Act 2010.

### **Risk Assessment**

51. Failure to implement the new requirements for standards in local government will breach the council's legal duty to promote and maintain high standards of conduct and is likely to damage the reputation of the council and undermine public confidence in local democracy.

### **Financial Implications**

52. Implementation of the new arrangements will be met within existing resources. As under the current system, work on standards will primarily be undertaken by myself as Monitoring Officer, two Deputy Monitoring Officers (Head of Legal and Head of



Governance), two ethical governance officers and an administrative assistant.

53. The current Standards Committee comprises 22 members - 6 elected members, 8 independent members and 8 parish / town representatives. It is chaired by an independent member. The cost of the Committee amounts to £ 41,503 a year plus travel costs. [Based on the allowances for 2012/13 - £ 5,663 for the chairman of the standards committee and £ 2240 for each independent member and parish / town representative.].
54. Allowances for members and co-opted members of the proposed new standards committee and the level of remuneration for the independent persons will need to be determined by council having regard to the advice of the Independent Remuneration Panel. However, applying for illustrative purposes the same rates for the chairman and co-opted members, and the co-opted member rate of £ 2,240 for each of the 3 independent persons the overall cost for the new arrangements would be £ 30,303 a year plus travel costs.
55. If the council were to decide not to establish a standards committee then all decisions on reviews, hearings and dispensations would need to be made by the Monitoring Officer. This would be likely to generate the need for additional staffing capacity of up to £ 50k.

### **Legal Implications**

56. The new statutory requirements which the council is required to implement are set out in this report and summarised in the briefing note at Appendix A.

### **Recommendations:**

57. Council is, accordingly, recommended:

- (1) To approve the draft code of conduct at Appendix D for consultation with Wiltshire Councillors and Wiltshire Parish Councillors before final approval is sought at the next meeting of council on 26 June 2012.**
- (2) To approve the arrangements for dealing with code of conduct complaints, as set out in Appendix F for consultation with Wiltshire Councillors and Wiltshire Parish Councillors before final approval is sought at the next meeting of council on 26 June 2012.**
- (3) To approve the job description and specification for the independent person at Appendix G.**
- (4) To authorise the Monitoring Officer, in consultation with the chairman of the new standards committee and/or the chairman of the existing Standards Committee, to take the necessary steps to secure the appointment of 3 independent persons in accordance with paragraph 30 above.**

- (5) To seek the advice of the Independent Remuneration Panel on an appropriate rate of remuneration for the independent person and to bring this back to council for decision on 26 June 2012.**
- (6) To agree to establish a standards committee with terms of reference as set out in Appendix H.**
- (7) To authorise the Monitoring Officer, in consultation with the chairman of the new standards committee, to agree the arrangements for selection of co-opted members in accordance with paragraph 34 above, for appointment by council at its meeting on 26 June 2012.**
- (8) To retain the current Standards Committee, including the current membership, for such a further period as is necessary to discharge its statutory obligations**
- (9) Council is asked to agree to consult parish councils on the council's proposals for the implementation of the new standards framework in Wiltshire before a final decision is made by council on 26 June 2012.**

**IAN GIBBONS**

**SOLICITOR TO THE COUNCIL AND MONITORING OFFICER**

---

Report Author: Ian Gibbons

Appendices

Appendix A - Localism Act Briefing Note December 2011

Appendix B - LGA Draft Code of Conduct

Appendix C - DCLG Illustrative Text for a code

Appendix D - Draft Code of Conduct from Standards Committee

Appendix E - Draft notes from the Members in the Locality Task Group, 26 April 2012

Appendix F - Proposed Complaints Procedure from Standards Committee

Appendix G - Independent Person: Job Description and Person Specification

Appendix H - Proposed Terms of Reference for new Standards Committee

Annex 1 to Appendix F - Range of sanctions under complaints procedure

Annex 2 to Appendix F - Flow chart summary of complaints procedure