

## **Wiltshire Council**

### **Standards Committee**

**25 January 2012**

---

## **NEW STANDARDS FRAMEWORK - ISSUES FOR CONSIDERATION**

### **Purpose of Report**

1. This report:
  - a. identifies the key issues which the Standards Committee needs to consider in preparing to meet the requirements of the new standards framework introduced under the Localism Act 2011.
  - b. updates members on the outcome of discussions so far with the Standards Task and Finish Group on the new standards framework, Group Leaders and the Constitution Focus Group.

### **Background**

2. The Localism Act 2011 introduces fundamental changes to the regulatory framework for standards of conduct of elected and co-opted members of relevant authorities.
3. The key changes are summarised in a briefing note which has been circulated to Wiltshire Councillors and clerks to parish and town councils. A copy of the briefing note and covering letter is attached at Appendix A.
4. Apart from the new rules on predetermination, which came into effect on 15 January 2012, the main provisions on standards are now due to be implemented on 1 July 2012. It is not yet known when the regulations on interests will be issued.

### **Main Considerations**

#### **Predetermination**

5. The briefing note summarises the effect of the changes to the law on predetermination. These provisions are now in force.

6. The Council's Planning Code of Good Practice for Members of Wiltshire Council is being revised to reflect the new provisions and will be considered by the Constitution Focus Group at its next meeting.

7. Members are invited to consider the following issues:

- **whether to have a standards committee;**
- **what code of conduct should be adopted;**
- **what arrangements should be adopted for dealing with misconduct complaints?**
- **What arrangements should be made for the appointment of Independent Persons?**
- **What arrangements should be adopted for granting dispensations?**
- **What support is to be provided to parish councils in implementing the new arrangements?**

#### **Does the Council wish to have a standards committee?**

8. Under the new provisions there is no longer a statutory requirement to have a standards committee. It will be for the council to decide whether it wishes to have one. In reaching a view on this issue the council should bear in mind the following:

- the duty to promote high standards of member conduct;
- the need to have in place arrangements for investigating and determining complaints against unitary and parish councillors, and for deciding what action should be taken if a breach of the code is found to have occurred (or recommending action to the relevant parish council in the case of parish councillors);
- the size and membership of a standards committee:
  - ordinary committee subject to the rules on political proportionality;
  - existing independent and parish council voting co-opted members will cease to hold office;
  - power to co-opt members e.g. parish council representatives, but these would be non-voting;
- role of a standards committee:
  - duty to promote high standards of member conduct;
  - dealing with complaints of member misconduct;
  - wider role?

[the terms of reference of the current standards committee include oversight of the constitution, corporate complaints handling, and whistleblowing policy]

9. In my view it would be appropriate for the council to establish a standards committee to discharge the council's functions under the new standards regime. The wider role undertaken by the existing standards committee has worked well, particularly in relation to oversight of the constitution, and members may wish to see this continue.
10. Members are invited to consider the appropriate size for a standards committee. This will need to have a sufficient number of members to enable sub-committees to be established to deal with any delegated functions, such as hearings and requests for dispensation. Members may also wish to consider co-opting non-voting members, including parish council representatives, given the requirement to deal with complaints against parish councillors.
11. It is suggested that a membership of around 12 elected members, and perhaps 2-4 non-voting co-opted members might be an appropriate size.

#### **What should the Council include in its Code of Conduct?**

12. 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
13. Regulations to be issued (date as yet unknown) will set out what pecuniary interests must be registered and disclosed. The council's code may include such other pecuniary and non-pecuniary interests as the council considers appropriate for registration and disclosure.
14. Part 1 of the existing code of conduct contains rules of conduct which broadly reflect the above principles. They have become familiar to members and are supported by guidance issued by Standards for England, and some case law to assist with interpretation. It is proposed that these provisions are adopted in the new code in the first instance as a holding position. The content may be reviewed and amended subsequently as necessary.
15. As for the registration and disclosure of interests it is difficult to draft this part of the code until the regulations defining disclosable pecuniary interests are available. It is, therefore, proposed that the provisions on personal and prejudicial interests in Part 2 of the current code are adopted to the extent that they are consistent with the 2011

Act. This part may be reviewed in the light of the new regulations when these are issued.

16. This would mean that the current requirement to withdraw when a prejudicial interest is declared (after exercising the right to speak for up to 3 minutes) will no longer apply. The requirement to withdraw may only be imposed under standing orders in relation to disclosable pecuniary interests, which are to be defined in the regulations.

17. This approach has the following advantages:

- requires minimum change and member training;
- enables the council to adopt a tried and tested code at this stage with guidance and case law;
- allows for review and amendment when the statutory requirements on interests are clear.
- parish councils are more likely to adopt a code that is familiar to them.

18. Regard will be had to any national or regional code that is developed e.g. by the LGA or the Association of Council Secretaries and Solicitors (ACSeS)> There is significant merit in authorities within the same area adopting the same code.

### **What arrangements should be adopted for dealing with misconduct complaints?**

19. 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.

20. 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.

21. Any procedure adopted should be:

- fair
- quick and simple
- proportionate
- cost effective
- serve to improve standards of conduct

22. Key elements of the process might include:

- informal resolution by Monitoring Officer before formal complaint;
- where a formal complaint is made, subject member is invited to provide an initial written response to the complaint;

- Monitoring Officer to determine whether the complaint merits formal investigation on the basis of the written information from the complainant and subject member, after consultation with the Independent Person.
- Monitoring Officer may decide to:
  - take no further action;
  - refer for other action e.g. mediation or other informal resolution; or
  - refer for investigation.
- investigation of complaint by officer appointed by the Monitoring Officer.
- where no breach of the code is found the Monitoring Officer reports to the parties, Independent Person and to standards committee;
- where a breach of the code is found the Monitoring Officer consults the Independent Person and either:
  - seeks an informal resolution, if appropriate;
  - refers the matter to a hearing sub-committee of the standards committee for determination.
- procedure for hearing - adopt current approach.
- limited sanctions available - censure;  
In the case of a parish councillor recommend action to parish council.

23. A draft process for dealing with code of conduct complaints under the new regime is attached at Appendix B for consideration.

### **What arrangements should be made for the appointment of Independent Persons?**

24. 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.

25. Issues to consider:

- how many Independent Persons to appoint?
- remuneration of Independent Persons (outside members' allowance scheme)

- arrangements for advertisement of position, person specification and appointments process; it is suggested that these are delegated to the Monitoring Officer in consultation with the chairman of the current standards committee or new standards committee, as the case may be.

### **What arrangements should be adopted for granting dispensations?**

26. 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.
27. It is proposed that this function is delegated to a sub-committee of the standards committee.
28. Parish councils will need to make their own arrangements for granting dispensations.

### **What support is to be provided to parish councils in implementing the new arrangements?**

29. Members are invited to consider how the council can best support parish councils in implementing the new standards framework.

### **Standards Task and Finish Group**

30. This group was set up by the Standards Committee to assist with the implementation of the new legislation. It has the following membership:

Mr Gerry Robson OBE, Vice Chairman of Standards Committee  
 Mr Michael Cronin  
 Mr Philip Gill MBE JP  
 Mr John Scragg  
 Miss Pam Turner  
 Cllr Julian Johnson

Mrs Isabel McCord attended as Chairman of the Constitution Focus Group.

31. The Task and Finish Group met on 11 January 2012 to consider the above issues. Their preliminary views may be summarised as follows:

### **Standards Committee**

- The council should establish a standards committee to discharge its functions under the new legislation;

- It will be for the council to decide whether the committee is politically balanced;
- It would be desirable to co-opt both independent and parish council non-voting members from the existing pool of membership for a fixed period, say one year, to support the transition to the new arrangements, drawing on the experience they have gained from their work on the current standards committee. There should initially be two independent and two parish council co-opted members. The position would be reviewed subsequently
- A membership of around 12 elected members would be appropriate;
- the new standards committee should continue with the wider role undertaken by the present standards committee e.g. oversight of the constitution;
- it will be for parish councils to decide whether they should have a standards committee;

### **Code of Conduct**

- the council should initially adopt the existing code of conduct, as far as this is consistent with the new legislation, and review when the regulations on disclosable pecuniary interests are available.
- regard should be had to any national code of conduct that emerges;
- parish councils should be encouraged to adopt the same code;

### **Arrangements for dealing with misconduct complaints**

- the group agreed the principles and outline procedure set out in paragraphs 21-22 above:
- there should be a strong emphasis on informal resolution where possible;
- details of a complaint should generally be confidential to the parties until such time as it is decided otherwise;
- the complainant should be recognised as a formal party to the process - unlike the present statutory system;
- arrangements should be put in place to support members who are the subject of complaints;

### **Appointment of Independent Persons**

- 2 -3 independent persons should be appointed in accordance with the arrangements set out in the report;
- the council will need to determine the level of remuneration for this office;
- the council could consider using independent members from neighbouring authorities;

### **Dispensations**

- the task and finish group felt that the current arrangement involving a dedicated dispensations sub-committee has worked well and should be continued;
- parish councils will need to establish their own arrangements for dispensations;

### **Group Leaders**

32. Group leaders considered the report on the main issues for consideration and were advised of the views of the task and finish group that had met just before them.
33. The consensus amongst Group Leaders was that there should be a minimalist approach to the Code of Conduct and that a standards committee should be appointed. However caution was advised that we should not try and move too quickly. Given that the timescale for implementation of the new arrangements is now 1 July 2012 Group Leaders agreed that this should not go to the February meeting of Council and that further work was needed on the detail and soundings needed to be taken from a wider group of councillors. The matter could then be brought back to Council in time for implementation by July.
34. The Leader of the Council reported that it may be necessary to hold a special council meeting sometime in June to consider the Core Strategy and this timeframe would enable the Council to approve the proposed new standards framework.
35. The following actions were agreed:
  - a. To ask the Constitution Focus Group to look at the details and the key issues that need to be resolved in relation to the new standards framework and to make recommendations via the current standards committee for consideration by Group Leaders and the Council.



- b. To ask Group Leaders to consult their groups on the key issues that require consideration in the Framework.
  - c. To ask officers to put in place arrangements to enable all councillors to discuss the key issues within the new framework, possibly at a seminar, prior to formal consideration by Council.
  - d. To note that in the meantime the current Standards provisions remain in place.
36. The Constitution Focus Group considered these issues at its meeting on 16 January 2012. They agreed with Group Leaders that as the date for implementation of the new legislation has been put back to 1 July 2012 more time should be allowed to work on the new arrangements in consultation with the wider group of members. The Focus Group will, therefore, meet again to consider these matters in more depth with a view to a report going via the Standards Committee to the meeting of Council in May.
37. A note of the Focus Group's discussion will be circulated.

**Recommendation:**

38. The Committee is asked to consider the above issues having regard to the views of the Task and Finish Group, Group Leaders and the Constitution Focus Group.

**IAN GIBBONS**

**SOLICITOR TO THE COUNCIL AND MONITORING OFFICER**

---

Report Author: Ian Gibbons