

Committee: CONSTITUTION WORKING GROUP **Agenda Item**
Date: 7 June 2011
Title: STANDARDS OF CONDUCT
Author: Michael Perry, Assistant Chief Executive - Legal, 01799 510416 **Item for decision**

Summary

1. This report is to inform members of the contents of the Localism Bill 2010 which is currently passing through Parliament and to seek members' views as to how the Council ought to fulfil its statutory duties under the proposed new standards regime and what assistance (if any) the Council should be prepared to give to town and parish councils within the district.

Recommendations

2. That members give preliminary consideration to recommendations that it may wish to make to Full Council in due course.

Financial Implications

3. The proposed abolition of Standards Committees may have a modest positive financial impact for the Council although any cost incurred in the provision of a voluntary Standards Committee would need to be offset against this saving. There would also be a non-cashable saving in terms of officer time in the event that investigations were not required or the procedures for investigations were to be streamlined.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	In the event that the Bill is passed into law the Council may be at a higher risk of legal challenge.

Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. The Localism Bill 2010 will, if enacted, give effect to the Government's commitment to abolish the current standards regime.
7. At present there is a statutory instrument specifying general principles of conduct for members of local authorities. All relevant authorities (including district councils) are required to have a standards committee. All relevant authorities are also required to adopt a Code of Conduct which must as a minimum contain the provisions of a Model Code prescribed by the Government. There is a statutory regime for dealing with complaints of breaches of the Code of Conduct with a right of appeal to the tribunal system. The Standards Committee and Monitoring Officer of a district council perform those roles not only for the district council but also for the town and parish councils within the district. All of these provisions will be repealed if the Localism Bill is passed into law.
8. To replace the current standards regime the Bill will impose a duty on local authorities to promote and maintain high standards of conduct by its members and co-opted members. Town and parish councils are also subject to this duty.
9. Although the duty to promote high standards of conduct is mandatory how this is done is left to the discretion of local authorities. Section 16 of the Bill empowers local authorities to adopt a Code of Conduct. However, there is will be no duty to do so and if a council decides not to have a Code of Conduct then there will be no mechanism for dealing with conduct issues on the part of members outside the general law, the local government ombudsman or the ballot box.
10. However if an authority does adopt a voluntary Code of Conduct, additional duties arise. Written allegations that a member has breached the Code of Conduct must be subject to an examination by the authority to consider whether it is appropriate to investigate the allegation and if appropriate for an investigation to be conducted in such a manner as the authority thinks fit. If as a result of the investigation there is a finding of failure to observe the Code of Conduct then the Council must decide whether to take action and if so what action to take. The Bill contains no powers of sanction and it therefore follows that a local authority is limited to requesting an apology, censuring a member or making a recommendation of a greater sanction to Full Council or the Cabinet such as suspension from committees, removal from outside bodies or suspension or removal from the Cabinet.

11. The Localism Bill does not contain an express power to appoint a Standards Committee. However, such a power does exist under the Local Government Act 1972. It would be open to the Council to include independent persons on a Standards Committee. Such persons would not be entitled to a vote unless the Committee was acting in an advisory capacity only.
12. One of the consequences of an abolition of the current regime is that the district council will no longer be responsible for standards issues relating to town and parish councils within the district. In such a circumstance, it would appear unnecessary for town and parish representatives to be members of any standards committee as is the case at present.
13. Although town and parish councils are subject to the same duty of promoting high standards of conduct as the district council, there is a disincentive to them to adopt a Code of Conduct as should they do so they would be subject to the same duties regarding investigation of complaints as the district council as are set out above.
14. Issues that members will need to consider are as follows:
 - (a) Should the Council adopt a voluntary Code of Conduct.
 - (b) At present it is a statutory function of Standards Committees to advise councils on the adoption or modification of a Code of Conduct. The Standards Committee could legitimately fill that roll with regard to a Code of Conduct to come into effect after the Localism Bill becomes law. Do members agree that the Standards Committee should be asked to advise on a voluntary Code of Conduct and if not how should a voluntary Code of Conduct be prepared?
 - (c) If members concluded that the Council should not adopt a voluntary Code of Conduct what arrangements do members suggest to ensure compliance with the duty to promote high standards of conduct among members?
 - (d) In the event members do wish to recommend that there should be a voluntary Code of Conduct do members agree that the current Standards Committee is best placed to advise on how allegations of a breach of the Code should be investigated?
 - (e) In the event that members determine that there should be a Standards Committee, do members consider that:
 - (i) independent persons and/or
 - (ii) town and parish representativesshould be members of such a committee?
 - (f) What assistance (if any) do members consider that the Council should be prepared to offer town and parish councils with regards to standards?

Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
The council fails to adopt a Code of Conduct.	1, the Government expectation is that all local authorities will adopt a voluntary Code. Further good practice suggests that a Code should be adopted.	3, public confidence is likely to be undermined if there is no internal mechanism for dealing with allegations of misconduct on the part of councillors.	An appropriate Code of Conduct be adopted.
A Code of Conduct is adopted.	3, for the reasons set out above.	2, if there is a Code of Conduct and a finding of breach, the Localism Bill contains no mechanism for appealing against that finding. Consequently the only recourse for a disaffected member is to seek judicial review of the Council's decision.	The Council should adopt clear criteria as to how complaints will be handled and what action the Council is likely to take in the event of a breach being established.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.