

**Committee:** STANDARDS

**Agenda Item**

**Date:** 9 January 2012

**Title:** STANDARDS AFTER THE LOCALISM ACT  
2011

**2**

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Item for decision

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## Summary

1. This report is to inform members of the provisions of the Localism Act 2011 and to seek members views as to what recommendations it wishes to make to the Council on a range of issues.

## Recommendations

2. For convenience, the recommendations are set out at the end of each section of this report.

## Background Papers

- None

## Impact

- 3.

Communication/Consultation	None
Community Safety	None.
Equalities	None.
Finance	None.
Health and Safety	None.
Human Rights and legal implications	As set out in the body of this report
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None

## Situation

4. This committee has previously considered various issues arising from the Localism Bill and has made recommendations based on the content thereof. In particular the committee has commented on a proposed Code of Conduct for members on the basis that such a code would be voluntary and also on a proposed procedure for dealing with allegations of a breach of the Code.
5. The bill received Royal Assent on 15 November 2011 and thus became the Localism Act 2011. There are significant differences between the Act and the bill which means that the work done by this committee so far will need to be revisited.
6. As anticipated the Act includes a statutory duty on the part of all relevant authorities (which included town and parish councils) to promote and maintain high standards of conduct by its members and co-opted members. However the Act goes on to impose a requirement that in discharging that duty all relevant authorities must adopt a Code of Conduct. Town and parish councils may fulfil this duty by adopting a Code which has been adopted by the district council.
7. A Code of Conduct must be consistent with the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It must also include provisions for the registration and declaration of pecuniary and non-pecuniary interests.

RECOMMENDED that members re-consider the draft code of conduct approved at the meeting of this committee on 14 November 2011 and to determine whether it is consistent with the Nolan Principles and whether any further amendments need to be made to the general provisions of the Code in the light of the remainder of the Act. A copy of that draft code appears as Appendix A to this report.

8. The position with regard to interests is unclear. There appear to be 3 types of interests, disclosable pecuniary interests, pecuniary interests and non-pecuniary interests. "Pecuniary" is not defined in the Act and must therefore be given its ordinary meaning of "financial". Disclosable pecuniary interests are to be defined by a statutory instrument which it is understood will be the subject of consultation. Failure to register or disclose a disclosable pecuniary interest will be an offence punishable by a fine of up to £5000. In addition the magistrates court may on conviction disqualify a member from being a member of a council or any other relevant authority for up to 5 years. Breaches of the Code of Conduct in relation to failure to register or declare other pecuniary interests and non-pecuniary interests can only be dealt with as a breach of the Code.

9. Prosecutions for a breach of the legislation relating to disclosable pecuniary interests may only be brought by or on behalf of the Director of Public Prosecutions. The DPP is unlikely to authorise a prosecution unless the breach of the legislation is considered serious. Further, prosecutions may take some time to be dealt with. Members will need to consider whether the Code of Conduct should deal with the registration and declaration of disclosable pecuniary interests as well as other types of interest required by the Code to be registered. On the one hand it could be argued that such a provision is superfluous as there are sanctions contained in the legislation, on the other it would appear that a member may be sanctioned by the Council for failing to register or declare a non-disclosable interest whereas a member who behaves improperly with regard to a disclosable interest may escape sanction if the DPP declines to authorise a prosecution.
10. Although the definition of disclosable pecuniary interests is to be dealt with by statutory instrument the Act states that these interests will include disclosable pecuniary interests of the member's spouse, civil partner or co-habitee.
11. Under the current Code of Conduct members are required to register their interests upon election and to notify the Monitoring Officer in writing of any change in those interests within 28 days of the change occurring. The requirements for updating the register in respect of non-disclosable interests is a matter for the Code of Conduct. However the Act deals with updating so far as disclosable interests are concerned. The requirement is to register the interests on election or appointment and to update it on re-election or re-appointment. The only requirement to update the register between elections/appointments is where a matter relating to a disclosable pecuniary interest arises at a meeting of the Council or its committees. In such circumstances the member must declare the interest to the meeting and must then register it with the Monitoring Officer within 28 days.
12. The Act does not contain any requirement for members to declare at meetings the existence of disclosable pecuniary interests if such interests appear on the member's register of interests. This is contrary to the current Code of Conduct which requires members to declare the existence and nature of personal interests even when registered. I consider this to be better practice as the public and indeed other members would need to look at the register of interests before each meeting to ascertain what interests (if any) members have in items under consideration.
13. The Act deals with participation of members in matters where they have a disclosable pecuniary interest. Briefly they may not take part in any discussion or vote. The existing right to make statements, give evidence or answer questions is repealed. The Act gives councils the power to make standing orders which would require a member to leave a meeting

when such an interest arises. This is in contrast to the existing Code which requires members to leave the room when a matter in which they have a prejudicial interest is under consideration (subject to the member's right to speak before doing so).

14. To assist members in dealing with the following recommendations a copy of parts 2 and 3 of the existing Code of Conduct dealing with Members Interests is appended at Appendix B.

RECOMMENDED that members determine:-

- (a) what pecuniary interests members should be required to register under the Code?
  - (b) what non-pecuniary interests members should be required to register under the Code?
  - (c) should the requirement to register interests (other than disclosable pecuniary interests) extend to the interests of the member's spouse, civil partner or co-habitee?
  - (d) what requirements should be imposed for the register of interests to be updated?
  - (e) in what circumstances should members be required to declare interests and what should they be required to declare?
  - (f) to what extent should members with interests be permitted to attend and/or participate in meetings?
15. The Act requires relevant authorities to publish the adoption, revision or replacement of a Code of Conduct in such manner as is likely to bring it to the attention of residents of the district. There is also a requirement for the register of interests to be published on line by the district council and by parish councils that have websites. The district council must also publish on line the register of interests of the town and parish councils in the district as well as having a copy available for inspection at the district council offices.

RECOMMENDED that:- Members determine whether publication of the Code of Conduct and the fact of its adoption on the Council's website would be sufficient to bring it to the attention of local residents or whether any further publicity would be desirable

16. The Act does not contain an express power for authorities to appoint Standards Committees. However as standards matters are not to be an executive function the Council could appoint a Standards Committee under the Local Government Act 1972. Such a committee would be subject to the rules of political balance unless no member present at the meeting when the Committee is appointed votes against a non-balanced committee. In practical terms it would not be sensible to expect standards matters to be dealt with by Full Council and a Standards Committee is therefore the preferred option. Appended at Appendix C are the current paragraphs to the council's constitution dealing with the Standards Committee with my suggested amendments for the situation after the Act comes into effect.
17. The Act requires the appointment of independent persons but their role has changed. At present independent persons must be at least 25% of the Standards Committee and an independent person must be the chairman of the committee. Under the Act the district council must appoint at least 1 independent person whose views must be sought and taken into consideration before making a decision on an allegation of a breach of the Code of Conduct which it has decided to investigate and whose views it may take into account in other circumstances (e.g. revisions to the Code, guidance on the Code and deciding whether or not an allegation should be investigated). The independent person must also be available to give his or her views to members of any council within the district who are the subject of an allegation.
18. The Act provides that an independent person cannot be an employee, a member or a co-opted member of the district council nor someone who has held such a position within the 5 years prior to appointment. "Co-opted member" is defined as someone who is not a member of the council but is a member of the committee who is entitled to vote. It follows that our current independent members are disqualified from continuing in that role after the Act comes into effect (although they may act as independent persons for other district councils). It also follows that if the independent persons are members of the Standards Committee they will be unable to vote. Finally an independent person cannot act as chairman of the Standards Committee as the chairman must have a casting vote.

RECOMMENDED that:-

- (a) Members approve the suggested amendments to the constitution for recommendation to Full Council
- (b) Members determine whether independent persons should be appointed in an advisory role only or whether they should be appointed as non-voting members of the Standards Committee.

19. The power to grant dispensations is being expanded. At present a dispensation may only be granted if more than one half of the members of the council or a committee of the council would be unable to take part in the decision making process due to the provisions of the Code of Conduct (there is an additional ground relating to political balance but as drawn this ground is meaningless). Further at present dispensations are granted by the Standards Committee. The Act gives the responsible authorities power to grant dispensations. Thus town and parish councils could grant their own dispensations. The towns and parishes could, if they wished, delegate that function to the district council. At district level the decision could be taken by the Standards Committee or could be delegated to officers.
20. The grounds upon which a dispensation could be granted under the Act are:-
- The number of members who may not take part because of the existence of a disclosable pecuniary interest is so great that the transaction of the business would be impeded (this is probably limited to cases where the council or committee would be inquorate)
  - The political balance would be so upset as to be likely to affect the outcome
  - A dispensation would be in the interests of residents of the district/town/parish
  - The whole executive is unable to take part because of disclosable pecuniary interests
  - The grant of a dispensation is “otherwise desirable”

RECOMMENDED that:-

- (a) Members determine whether to recommend that the power to grant dispensations should be exercised by the Standards Committee or delegated to the Monitoring Officer
- (b) Members determine whether to recommend to town and parish councils that they perform the function of granting dispensations by way of delegation to the district council
- (c) Whether if the power to grant dispensations is delegated to the Monitoring Officer there should be a right of appeal

against a refusal or limited dispensation (i.e. to speak or vote but not both) to the Standards Committee

21. The Act will necessitate amendments to the procedure approved by the Committee for dealing with complaints which was drawn up by reference to the Bill. I append at Appendix D a revised version of those procedures for consideration.

RECOMMENDED that members approve the revised procedures for recommendation to Full Council with or without amendments

22. There will be further work required before the recommendations are ready to put before Full Council. In particular the Code of Conduct will need completing to include reference to members' interests. There may be little time for this to be done. At the time of the preparation of this report the government's timetable is not clear. If anything further is published before this meeting it will be reported verbally. However members are asked to consider how the final recommendations to Full Council may be formulated expeditiously.

RECOMMENDED that members determine whether to:-

- (a) agree to a further extraordinary meeting of this committee to be called to consider the final version of the Code and any other recommendations. (A further meeting will require at least 5 clear working days notice to be given)
- (b) agree to this meeting being adjourned for the same purpose. (This would enable a date to be fixed now which obviates the need for formal notice of a further meeting)
- (c) delegate the finalisation of the Code to the Monitoring Officer in consultation with the Standards Committee. (With this option the final versions of documents would be circulated to all members of the committee electronically for comment)
- (d) delegate the finalisation of the Code to the Monitoring Officer in consultation with the chairman of the Standards Committee or in the event of the Chairman being unavailable for any reason in consultation with one of the other independent persons.

## Risk Analysis

23.

Risk	Likelihood	Impact	Mitigating actions
The council is not prepared to meet its duties under the Localism Act 2011	3 Standards for England indicate that it expects its regulatory functions to cease on 31 January 2012. If that is the case there is little time for the council to achieve what is required	3, The council would suffer reputational damage if it did not have a code of conduct and were unable to deal with allegations of misconduct by members	Unless an appropriate delegation is agreed it may be necessary for further extra ordinary meetings of this committee to be called. It may also be necessary for an extra ordinary meeting of Full Council to be called to ensure that a Code and the necessary procedures are in place.

- 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.



## APPENDIX A

### THE COUNCILLORS' CODE OF CONDUCT

#### 1. Introduction and Interpretation

This Code applies to **you** as a member of an authority. It is your responsibility to comply with the provisions of this Code.

#### 2. Scope

Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority.

#### 3. General Obligations

- 3.1. You must treat others with respect.
- 3.2. You must observe any protocols or codes of practice adopted by your authority.
- 3.3. You must not:
  - 3.3.1. do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - 3.3.2. bully any person;
  - 3.3.3. intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;
  - 3.3.4. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
  - 3.3.5. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought

reasonably to be aware, is of a confidential nature, except where:

- 3.3.5.1. you have the consent of a person authorised to give it;
  - 3.3.5.2. you are required by law to do so;
  - 3.3.5.3. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - 3.3.5.4. the disclosure is reasonable and in the public interest; and is made in good faith and in compliance with the reasonable requirements of the authority;
- 3.3.6. prevent another person from gaining access to information to which that person is entitled by law.
- 3.3.7. conduct yourself in a manner which could be reasonably regarded as bringing your authority into disrepute
- 3.3.8. use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
- 3.4. You must, when using or authorising the use by others of the resources of your authority:
- 3.4.1. act in accordance with your authority's reasonable requirements;
  - 3.4.2. ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - 3.4.3. have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 3.5. When reaching decisions on any matter you must have regard to any relevant advice provided to you by your authority's Chief Finance Officer or your authority's Monitoring Officer, where that officer is acting pursuant to his or her statutory duties.

- 3.6. You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## APPENDIX B

### Extract from the existing Code of Conduct

#### Part 2 Interests

#### 4. Personal interests

4.1. You have a personal interest in any business of your authority where either:-

4.1.1. it relates to or is likely to affect:-

4.1.1.1. any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

4.1.1.2. any body:-

4.1.1.2.1. exercising functions of a public nature;

4.1.1.2.2. directed to charitable purposes; or

4.1.1.2.3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

4.1.1.3. any employment or business carried on by you;

4.1.1.4. any person or body who employs or has appointed you;

4.1.1.5. any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

4.1.1.6. any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest

in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

4.1.1.7. any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

4.1.1.8. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

4.1.1.9. any land in your authority's area in which you have a beneficial interest;

4.1.1.10. any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

4.1.1.11. any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

4.1.1.12. a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of:-

4.1.1.12.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

4.1.1.12.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

4.2. In paragraph 4.1.1.12, a relevant person is:-

- 4.2.1. a member of your family or any person with whom you have a close association; or
- 4.2.2. any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- 4.2.3. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- 4.2.4. any body of a type described in paragraph 4.1.1.1 or 4.1.1.2

## **5. Disclosure of personal interests**

- 5.1. Subject to paragraphs 5.2 to 5.7, where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 5.2. Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 4.1.1.1 or 4.1.1.2.1, you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 5.3. Where you have a personal interest in any business of the authority of the type mentioned in paragraph 4.1.1.8 you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 5.4. Paragraph 5.1 only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 5.5. Where you have a personal interest but, by virtue of paragraph 10, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you

have a personal interest, but need not disclose the sensitive information to the meeting.

## 6. Prejudicial interest generally

6.1. Subject to paragraph 6.2, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

6.2. You do not have a prejudicial interest in any business of the authority where that business:-

6.2.1. does not affect your financial position or the financial position of a person or body described in paragraph 4

6.2.2. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 4; or

6.2.3. relates to the functions of your authority in respect of:-

6.2.3.1. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

6.2.3.2. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

6.2.3.3. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

6.2.3.4. an allowance, payment or indemnity given to members;

6.2.3.5. any ceremonial honour given to members; and

6.2.3.6. setting council tax or a precept under the Local Government Finance Act 1992.

## **7. Prejudicial interests arising in relation to overview and scrutiny committees**

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:-

7.1. that business relates to a decision made (whether implemented or not) or action taken by another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

7.2. at the time the decision was made or action was taken, you were a member of the committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **8. Effect of prejudicial interests on participation**

8.1. Subject to paragraph 8.2, where you have a prejudicial interest in any business of your authority:-

8.1.1. you must withdraw from the room or chamber where a meeting considering the business is being held:-

8.1.1.1. in a case where paragraph 8.2 applies, immediately after making representations, answering questions or giving evidence;

8.1.1.2. in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee; and

8.1.2. you must not seek improperly to influence a decision about that business.



8.2. Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Part 3**

#### **Registration of Members' Interests**

#### **9. Registration of members' interests**

9.1. Subject to paragraph 10, you must, within 28 days of:-

9.1.1. this Code being adopted by or applied to your authority; or

9.1.2. your election or appointment to office (where that is later), register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

9.2. Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

#### **10. Sensitive information**

10.1. Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13

10.2. You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 10.1 is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

10.3. In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## APPENDIX C

### Article 9 The Standards Committee

#### 9.1 Standards Committee

The Council will establish a Standards Committee.

#### 9.2 Composition

The Standards Committee will be composed of at least ~~four~~ **six** councillors who may not include **any members of the executive and** three people who are not councillors or officers of the Council (the independent members) ~~and three members of town or parish councils within the district (the town and parish representatives)~~. **The Council acknowledges that the rules of political balance contained in the Local Government and Housing Act 1989 apply but providing no one at a meeting of the Full Council appointing the Standards Committee votes against the proposal** each of the political groups represented on the Council shall have at least one member on the Standards Committee. Each political groups represented on the Council shall nominate up to ~~two~~ **three** of its members. The Council will then appoint one member from each group and such additional members as may be necessary from the nominees. In the event that there are only two political groups represented on the Council **providing no one at a meeting of the Full Council appointing the Standards Committee votes against the proposal** each shall have ~~two~~ **three** members on the Standards Committee. ~~Independent members and town and parish representatives will be entitled to vote at all meetings of the Standards Committee. At least one town and parish representative must be present when matters relating to parish councils or their members are being considered.~~

#### 9.3 Chairing the Committee

~~An independent member of the Standards Committee must chair the committee and any sub-committee.~~ **A chairman of the Standards Committee will be appointed in accordance with the Council's procedure rules.**

#### 9.4 Role and Function

The Standards Committee will have the following roles and functions:

- 9.4.1 promoting and maintaining high standards of conduct by councillors and any co-opted members;

- 9.4.2 assisting councillors and any co-opted to observe the Members Code of Conduct;
- 9.4.3 advising the Council on the adoption or revision of the Members Code of Conduct;
- 9.4.4 monitoring the operation of the Members Code of Conduct;
- 9.4.5 advising, training or arranging to train councillors and any co-opted members on matters relating to the Members Code of Conduct;
- 9.4.6 granting dispensations to members from requirements relating to interests set out in the Members Code of Conduct;
- 9.4.7 determining whether complaints regarding alleged breaches of the Members Code of Conduct should be referred to the Monitoring Officer or the Standards Board for investigation;
- 9.4.8 dealing with any reports from an ethical standards officer or from the Monitoring Officer;
- 9.4.9 the exercise of the roles and functions above in relation to the town and parish councils wholly or mainly in its area and the members of those town and parish councils;
- 9.4.10 conduct reviews of petitions considered by the council's Scrutiny Committee when requested by the petition organiser to do so

## **9.5 Role of Independent Members**

- 9.5.1 Independent members shall not be entitled to vote on any matters determined by the Standards Committee
- 9.5.2 The Standards Committee must seek and take account of the views of at least one of the independent members before it makes a decision on an allegation of a breach of the Code of Conduct which it has decided to investigate
- 9.5.3 The council may seek the views of one or more of the independent members in other circumstances
- 9.5.4 Members of the Council and of Parish and Town Councils within the district who are the subject of an allegation of a breach of the Code of Conduct may also seek the views of an independent member



## Responsibility for Functions

Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 some functions must be undertaken by the Council, some involve the Council and the executive (functions which may not be the sole responsibility of the executive) and some which may be the function of the Council or the executive as the Council may determine (local choice functions). The executive has sole responsibility for all functions other than those not to be the sole responsibility of the executive by virtue of legislation and those reserved to the council by legislation or (in relation to local choice functions) by the Council itself. Where a function requires the involvement of the Council, save for in a limited number of cases where legislation requires the function to be performed by the Full Council, the function may be delegated to a committee of the Council or an officer.

### 1. Responsibility for local choice functions

Function	Decision-making body	Membership
The determination of an appeal against any decision made by or on behalf of the authority	Staff Appeals Committee	eight members of the executive or authority
Any function relating to contaminated land	The executive	
The discharge of any function relating to the control of pollution or the management of air quality	The executive	
The service of an abatement notice in respect of a statutory nuisance	The executive	
The passing of a resolution that <u>Schedule 2</u> to the Noise and Statutory Nuisance Act 1993 [ <i>power to require consent to the operation of loud speakers in the street</i> ] should apply in the authority's area	The Licensing Committee	11 members of the authority
The inspection of the authority's area to detect any statutory nuisance	The executive	

The investigation of any complaint as to the existence of a statutory nuisance	The executive
The obtaining of information under <u>section 330 of the Town and Country Planning Act 1990</u> as to interests in land	The executive
The obtaining of particulars of persons interested in land under <u>section 16 of the Local Government (Miscellaneous Provisions) Act 1976</u>	The executive
The appointment of any individual (a) to any office other than an office in which he is employed by the authority; (b) to any body other than - (i) the authority; (ii) a joint committee of two or more authorities; or (c) to any committee or sub-committee of such a body, and the revocation of any such appointment	The executive
The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities	The executive
Functions under <u>sections 106, 110, 111 and 113</u> of the 2007 Act relating to local area agreements	The executive

2. **Responsibility for Council functions**

<b>Committee</b>	<b>Membership</b>	<b>Functions</b>
<b>Development Control</b>	14 members of the authority	<p>Functions relating to town and country planning and development control as specified in paragraph A Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the Functions Regulations) save for power to acquire a listed building in need of repair and to serve a repairs notice under s.47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990</p> <p>Power to create footpaths, bridleways or restricted byways by agreement</p> <p>Power to make public path creation orders</p> <p>Power to make public path extinguishment orders and rail path extinguishment orders subject in each case to confirmation by the Secretary of State</p> <p>Power to divert footpaths bridleways and restricted byways</p> <p>Power to authorise the stopping up or diversion of a footpath, bridleway or restricted byway under s.257 Town and Country Planning Act 1990</p>



Power to extinguish public rights of way for planning purposes under s, 258 Town and Country Planning Act 1990

Powers in relation to hedgerows under the Hedgerows Regulations 1997

Powers relating to the preservation of trees under the Town and Country Planning Act 1990

Powers relating to high hedges

Powers in respect of common land and town and village greens under the Commons Act 2006

Licensing and Environmental Health Committee

11 members of the authority

Functions relating to licensing and registration in respect of the following matters:-

1. animal boarding establishments, dangerous wild animals, dog breeding, performing animals, pet shops, riding establishments and zoos
2. game and game dealers
3. house to house and street collections
4. hackney carriages, private hire vehicles, drivers and operators under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous

- Provisions) Act 1976
5. pleasure boats  
under Public Health  
Acts Amendment Act  
1907
  6. movable dwellings  
and camp sites  
under Public Health  
Act 1936
  7. caravan sites under  
Caravan Sites and  
Control of  
Development Act  
1960
  8. scrap yards under  
the Scrap Metal  
Dealers Act 1964
  9. tables, chairs and  
other items on  
pedestrian areas of  
highways under the  
Highways Act 1980
  10. sex establishments  
under the Local  
Government  
(Miscellaneous  
Provisions) Act 1982
  11. street trading under  
the Local  
Government  
(Miscellaneous  
Provisions) Act 1982
  12. acupuncture,  
tattooing, ear-  
piercing and  
electrolysis under  
the Local  
Government  
(Miscellaneous  
Provisions) Act 1982
  13. food premises under  
the Food Safety Act  
1990
  14. operation of  
loudspeakers under  
the Noise and

Statutory Nuisance  
Act 1993

15. licensable activities  
under the Licensing  
Act 2003

16. houses in multiple  
occupation under the  
Housing Act 2004

17. the Gambling Act  
2005 to include the  
power to set fees in  
accordance with  
regulations made  
there under

Functions in relation to  
health, safety and  
welfare in connection  
with work and control of  
dangerous substances  
to the extent that the  
functions are discharged  
by the authority  
otherwise than in its  
capacity as an employer  
under Part 1 Health and  
Safety at Work etc Act  
1974

Functions relating to  
smoke free premises

Power to designate a  
public place for the  
purposes of police  
powers relating to  
alcohol consumption

Power to make or  
revoke an alcohol  
disorder zone

## Full Council

Duty to appoint an  
electoral registration  
officer

Power to assign officers  
in relation to the  
requisitions of the

registration officer

Duty to appoint a  
Returning Officer for  
local government  
elections

Duty to provide  
assistance at European  
Parliamentary Elections

Power to pay expenses  
properly incurred by  
electoral registration  
officers

Power to make  
temporary appointments  
to parish councils

Power to submit  
proposals to the  
Secretary of State for a  
pilot scheme for local  
elections

Duty to consult on a  
change of scheme for  
elections

Power to alter the years  
of ordinary elections of  
parish councillors

Functions relating to the  
change of name of an  
electoral area

Power to change the  
name of the district

Power to confer the title  
of Honorary Alderman or  
to grant the freedom of  
the district

Power to petition for a  
charter to confer  
borough status

Power to make, amend,  
revoke, re-enact or  
enforce byelaws

Power to promote or  
oppose local or personal  
bills

Functions relating to local government pensions etc

Power to make standing orders including standing orders as to contracts

Power to appoint staff and to determine the terms and conditions upon which they hold office

Duty make arrangements for the proper administration of financial affairs etc under s.151 Local Government Act 1972

Power to appoint "proper officers"

Duties with regard to the appointment of a Head of Paid Service and Monitoring Officer

Power to adopt a scheme permitting co-opted members of overview and scrutiny committees to vote under paragraphs 12 and 14 schedule 1 Local Government Act 2000

Power to make payments or provide benefits in cases of maladministration

Standards Committee

6 members of the authority other members of the executive and 3 independent persons

To promote and maintain high standards of conduct within the Council

To advise the Council on the adoption or revision of its Code of Conduct

To monitor and advise

the Council about the operation of its Code of Conduct in the light of best practice and changes in the law To give assistance to members and co-opted members of the authority.

To ensure that all members of the Council have access to training in all aspects of the member Code of Conduct, that this training is actively promoted, and that members are aware of the standards expected from local councillors under the Code

Functions relating to standards of conduct of members under any relevant provision of, or regulations made under, the Localism Act 2011

Considering petitions when necessary under the Council's petitions scheme

### 3. **Functions which are not the sole responsibility of the executive**

The functions set out below are to be performed by the executive subject to the powers of the Council set out thereafter.

Preparation of a plan under the Children and Young Person's (England) Regulations 2005

Preparation of development plan documents under s.15 Planning and Compulsory Purchase Act 2004

Preparation of the licensing authority policy statement under the Gambling Act 2005

Alterations to the development plan under s.54 Town and Country Planning Act

1990 under transitional arrangements

Preparation of the sustainable communities strategy under s.4 Local Government Act 2000

The formulation or preparation of a plan or strategy for the control of the council's borrowing, investments or capital expenditure or for determining the council's minimum revenue provision

In the above cases the following powers are reserved to the council:-

- to instruct the executive to reconsider any draft plan or strategy submitted
- to amend any draft plan or strategy
- to approve for the purposes of public consultation under the Town and Country Planning (Development Plans) (England) Regulations 1999 draft proposals for the preparation of alterations to or the replacement of a development plan
- to approve any plan or strategy (whether or not in draft form) for submission to the Secretary of State or any Minister of the Crown for approval where such submission is required
- to approve a development plan document for the purpose of its submission to the Secretary of State for independent examination under s.20 Planning and Compulsory Purchase Act 2004
- to adopt (with or without modification) any of the above mentioned plans or strategies

Amending, modifying, revising, varying, withdrawing or revoking any plan or strategy referred to above shall be the responsibility of the executive only to the extent that it is required to give effect to the requirements of the Secretary of State or any Minister of the Crown in respect of a plan or strategy submitted for approval or is recommended by the person carrying out an independent examination of a development plan document or is authorised by the council when approving or adopting the plan or strategy.

The functions set out in the left hand column of the table below which but for this provision might be the responsibility of the executive shall not be the responsibility of the executive in the circumstances referred to in the right hand column of the table.

- |  |  |
|--|--|
| 1. Adoption of a plan or strategy (whether statutory or non-statutory) other than one of those referred to in the foregoing provisions of this paragraph | The Council has determined that the decision should be reserved to it  |
| 2. The determination of any matter in the discharge of a function which:-<br>2.1 is the responsibility of the executive; and                             | The person or body by whom the determination is to be made is minded to determine the matter contrary to or not wholly in accordance with the Council's budget or the Council's plan |

2.2 is concerned with the Council's budget, borrowing or capital expenditure	or strategy for the time being approved and adopted in relation to the Council's borrowing or capital expenditure and the decision maker is not authorised by the executive arrangements, financial regulations, standing orders or other rules and procedures to make a determination in those terms.
3. The determination of any matter in the discharge of a function: 3.1 which is the responsibility of the executive; and 3.2 in relation to which a plan or strategy (whether statutory or non-statutory) has been adopted or approved by the Council	The person or body by whom the determination is to be made is minded to determine the matter contrary to the approved or adopted plan or strategy

Paragraph 3 in the table above does not prevent the discharge of a function by the executive where the circumstances which render a decision necessary may reasonably be regarded as being urgent and the person or body making the decision has obtained from the Chairman of the Scrutiny Committee (or if there is none or he is unable to act from the Chairman of the Council or in his absence the Vice- Chairman of the council) a written statement that the determination needs to be made as a matter of urgency.

The functions set out in the left hand column of the table below are the function of the executive subject to the limitations set out in the right hand column.

Making an application under:- s.135(5) Leasehold Reform Housing and Urban Development Act 1993 s.32 or s.43 Housing Act 1985	Council authorisation to make an application is required
Making calculations (whether original or substitute) under ss. 32 – 37, 43 – 49, 52I & J, 52T & U Local Government Finance Act 1992	Only the preparation of estimates of amounts to be used for the purposes of the calculation and estimates of the calculations for submission to the Council for consideration, the reconsideration of those estimates and amounts in accordance with the Council's requirements and the submission of revised estimates and amounts for the Council's consideration are functions of the executive.



#### 4. **Responsibility for executive functions**

Under the Local Government Act 2000 the Leader may discharge all functions of the executive or may arrange for them to be discharged by the executive, a committee of the executive, a member of the executive or by an officer. Such an arrangement does not preclude the Leader exercising the function personally. In accordance with Article 7 of the constitution this section will be amended as soon as possible after the Council has moved to executive arrangements to show which functions are being allocated to the executive, committees of the executive, members of the executive or officers. Thereafter this section will be updated as soon as is reasonably practicable after an alterations to those arrangements are made.

## APPENDIX D

### PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE

1. The Standards Committee can only investigate complaints of a breach of the Code of Conduct by individual members. It cannot investigate complaints against the whole council, the cabinet, committees or council officers.
2. Complaints must be in writing. If a complainant is unable to make a complaint in writing personally council officers will assist. The council will supply a complaints form to assist complainants in making their complaint but its use is not compulsory and a letter or e-mail complaint will suffice.
3. Upon receipt of a complaint an acknowledgement will be sent to the complainant. The subject member will be informed that a complaint has been made and be told the substance of the complaint unless in the opinion of the Monitoring Officer to do so could prejudice a fair investigation.
4. The complainant will be offered the opportunity to advance reasons why his or her name should not be disclosed to the subject member and will be informed that if no response is received within 10 working days the subject member will be informed of the complainant's identity. In the event that the complainant does advance reasons as to why his or her name should not be revealed to the subject member at that time the Monitoring Officer will consult with an independent person/member of the Standards Committee. In the event that following such consultation the Monitoring Officer decides that the complainant's identity should be revealed then the complainant will be notified of that decision and will be given a period of 5 working days to decide whether to proceed with the complaint. If the complaint is not withdrawn the subject member will be informed of the complainant's name.
5. The Monitoring Officer or his or her deputy will consult with an independent person/member of the Standards Committee with regard to all complaints received. Such consultation may be at a meeting or on paper. Following such consultation the Monitoring Officer or his or her deputy will take one of the following decisions:-
  - a. To take no action
  - b. To take action other than an investigation (e.g. to ascertain whether the subject member may be willing to apologise, undergo training or undergo mediation)
  - c. To require an investigation

Whilst the Monitoring Officer is solely responsible for taking the decision where the independent person has expressed a view that the allegation

- should be investigated the Monitoring Officer will refer the matter to the Standards Committee if he or she is of a view that an investigation is unnecessary and the Standards Committee will then determine how the allegation should be dealt with.
6. Not all complaints will be passed for action. The subject of the complaint must have been a member of the council at the time the facts alleged occurred. The complaint, if proved, must also be capable of amounting to a breach of the Code of Conduct. No findings of fact are made at this stage. The decision as to whether to investigate a complaint is made on the assumption that the facts as alleged are true. Findings of fact are only made after an investigation and report to a sub-committee.
  7. Even when the aforementioned conditions are satisfied this does not necessarily mean that a case will be passed for action. There is a balance to be struck between the desirability of ensuring that issues regarding the Code of Conduct are dealt with appropriately against the costs involved of carrying out an investigation and hearing. The Standards Committee are of the view that there is little public benefit in investigating allegations which are not sufficiently serious, politically motivated, malicious or vexatious. In reaching a decision whether to refer a case for action the following criteria will be applied:-
    - a. Complaints which are not supported by sufficient information are unlikely to be referred.
    - b. If the complaint has been investigated elsewhere further action is unlikely to be justified.
    - c. Stale complaints are unlikely to be referred. The Standards Committee expects that complainants would normally make their complaint within six months of the relevant facts coming to light.
    - d. Where a member who is the subject of a complaint has acknowledged the breach of the Code and made a sincere apology the complaint is unlikely to be referred unless it is considered that such apology would be insufficient.
  8. Where a case is accepted for investigation the Monitoring Officer will arrange for an investigation to be carried out.
  9. At the conclusion of the investigation the investigating officer may prepare a draft report which he sends to the complainant and the subject member for comment. The investigating officer may or may not amend the report in the light of representations received. Alternatively the investigating officer may in his or her sole discretion proceed to a final report.
  10. In the final report the investigating officer will set the facts which have been agreed and any conflicting evidence he has received from the complainant, the subject member and any witnesses. The investigating officer will not make any findings of fact nor express any opinion as to

- whether there has been a breach of the Code of Conduct in the final report.
11. Following an investigation there will be a hearing to consider the complaint and the investigating officer's report. The hearing will normally be held in public. The complainant and others may be invited to attend and give evidence. The subject member will have the opportunity of attending and addressing the hearing and calling evidence.
  12. Having received evidence and hearing submissions the Committee will announce its findings of fact, its findings as to whether there has been a breach of the Code of Conduct and what sanction (if any) should apply/it recommends. The Committee's findings and recommendation as to sanction are subject to ratification by Full Council
  13. The range of sanctions available are:-
    - a. To find that no further action is required.
    - b. To censure the member (this is the only sanction available if the member is no longer a councillor at the date of the hearing)
    - c. To restrict a member's access to council premises or the use of council resources providing that such restrictions do not prevent the member performing his functions as a councillor
    - d. Require the member to make a written apology in a form acceptable to the Standards Committee.
    - e. Require the member to undertake specified training.
    - f. Require the member to undertake specified conciliation or mediation.