

ITEM NO: 4

REPORT TO:	STANDARDS COMMITTEE
DATE:	11 September 2012
REPORT OF:	Sandra Stewart - Borough Solicitor (Monitoring Officer)
SUBJECT MATTER:	LOCAL GOVERNMENT: GENERAL PRINCIPLES OF CONDUCT FOR MEMBERS AND THE CONSEQUENCES OF A BREACH OF CONDUCT
REPORT SUMMARY:	This report sets out the principles governing the conduct of local government members in England and Wales to reflect the different measures in the Localism Act 2011, which came into force on 1 July 2012, and which apply to the standards regime in England. The standards regime in Wales continues to be governed by Part 3 of the Local Government Act 2000.
RECOMMENDATION(S)	To note.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	These are set out in the report.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
LINKS TO COMMUNITY PLAN:	Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in accountability of elected Members and the maintenance of high ethical standards.
ACCESS TO INFORMATION:	NON-CONFIDENTIAL This report does not contain information which warrants its consideration in the absence of the Press or members of the public
REFERENCE DOCUMENTS:	Any background papers or further information can be obtained from the Council's Borough Solicitor and statutory Monitoring Officer by contacting 0161-342-3028 or by e-mail Sandra.Stewart@tameside.gov.uk

THE STANDARDS REGIME: ENGLAND

1. BACKGROUND TO THE REGIME

- 1.1 On 25 May 2010, the coalition government announced its intention to abolish the Standards Board regime set out in Part 3 of the [Local Government Act 2000](#) (LGA 2000).
- 1.2 The government accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected members to office had the right to expect the highest standards of behaviour. However, it considered that the standards regime under the LGA 2000, under which all local authorities by law had to adopt a national code of conduct and a standards committee to oversee the behaviour of members and receive complaints, regulated by Standards for England, was ineffective, bureaucratic and encouraged petty complaints or harmful accusations. It therefore proposed that, through the [Localism Act 2011](#), local authorities would draw up their own local codes of conduct and it would become a criminal offence for members to deliberately withhold or misrepresent a financial interest.

2. THE LOCALISM ACT 2011

- 2.1 The Localism Act 2011 introduced fundamental changes to the regulation of standards of conduct for elected and co-opted members. It introduced:
 - A requirement to register pecuniary and other interests.
 - The creation of a new criminal offence of failing to register relevant interests.
- 2.2 The standards provisions that apply to relevant authorities are contained in [sections 26 to 37](#) of the Localism Act 2011. "Relevant authorities" are defined in [section 27](#) as:
 - A county council in England.
 - A district council.
 - A London borough council.
 - A town/parish council,
 - The Greater London Authority.
 - A police authority in Wales.
- 2.3 [Section 26](#) gives effect to Schedule 4 which makes the necessary amendments to other statutory provisions in Part 3 of the LGA 2000 to abolish:
 - Standards for England. This was brought into force by the Standards Board for England (Abolition) Order 2012 (SI 2012/668), see [Legal update, Order made abolishing Standards Board for England \(www.practicallaw.com/1-518-4343\)](#).
 - The standards committees of local authorities. (Note that local authorities will no longer be required to establish a standards committee but are not prevented from doing so.)
 - The powers of the First-tier Tribunal (Local Government Standards in England) relating to local government standards in England.
 - Local authorities' model codes of conduct issued by the Secretary of State. The previous model code of conduct, the [Local Authorities \(Model Code of Conduct\) Order 2007 \(SI 2007/1159\)](#) was revoked on 1 July 2012. On the same date, the Secretary of State's powers to specify general principles of public life and to issue a model code of conduct were revoked.

3. DUTY TO PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT

- 3.1 Under [section 27](#) of the Localism Act 2011, a relevant authority must:
 - Promote and maintain high standards of conduct by its members and co-opted members.

- When discharging its duty, adopt a voluntary code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as members (that is in an official capacity). There is therefore no requirement in relation to members' private lives although disqualification as a result of imprisonment for three months or more under section 80 of the [Local Government Act 1972](#) remains.

3.2 A town / parish council may (if it wishes to) adopt the code of its principal authority.

3.3 The decision in *Livingstone v Adjudication Panel for England [2006] EWHC 2533* helpfully clarified that "official capacity" in the previous 2007 Model Code that applied in England meant:

- Conducting the business of the authority or the member's office.
- Acting, claiming to act or giving the impression that a member is acting as a representative of their authority.

3.4 Therefore, any conduct in a member's **private capacity** will only be covered by a relevant authority's code if they engage in an activity that has a link with the functions of the member's office. Accordingly, words spoken to a journalist by the former Mayor of London, Ken Livingstone, likening the journalist to a concentration camp guard, were not only **not** spoken in an official capacity, but also were not arguably in the **performance of his functions** as Mayor.

3.5 Although the ten general principles of conduct were revoked in England on 1 July 2012, [section 28\(1\)](#) requires a relevant authority's code of conduct to be consistent with the Seven Principles of Public Life set out in the First Report of the **Nolan Committee on Standards in Public Life**. Although the seven Nolan principles (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) are set out in section 28 of the Localism Act 2011, they are not elaborated on.

4. CODE OF CONDUCT

4.1 [Section 28](#) provides that a local authority in England must ensure that its code of conduct includes appropriate provisions for registering, and disclosing:

- Pecuniary interests.
- Interests other than pecuniary interests.

4.2 The abolition of the statutory model code of conduct means that local authorities in England may have different codes so that:

- A councillor who is a member of more than one local authority is likely to be subject to different codes.
- Different members of the same joint committee will be subject to the code of their different parent authorities.

4.3 Members are not required to give an undertaking to comply with their local authority's code of conduct. The previous consequence of not complying with that requirement of not being able to act as a member, has been removed.

4.4 However, section 28 requires a relevant authority to have arrangements in place to deal with complaints that its code of conduct has been breached, including arrangements for:

- Complaints to be investigated.
- Decisions on allegations to be made.

4.5 The most appropriate body to carry out these functions is likely to be a voluntary standards committee or sub-committee established under [sections 101 and 102](#) of the Local

Government Act 1972 given that the provisions for the establishment of statutory standards committees in England have been removed by the repeal of [section 55](#) of the LGA 2000.

- 4.6 Although section 27(6) means that district and unitary authorities are responsible for having arrangements in place to investigate and determine allegations against parish councillors, the Localism Act 2011 is silent on how this might be done (other than requiring the views of an [independent person](#), see section 28(7) of the Localism Act 2011). Specifically, town/parish councils are under no obligation to have regard to any findings of the district or unitary authority or its standards committee.
- 4.7 On 11 April 2012, the Department for Communities and Local Government (DCLG) published an illustrative text for a local code of conduct that local authorities can use as a basis for their new local code of conduct should they want to do so. On 12 April 2012, the Local Government Association (LGA) published a template for a local code of conduct. The National Association of Local Councils has also published a template.

5. THE ROLE OF THE INDEPENDENT PERSON

- 5.1 Section 28(7) requires a relevant authority to appoint at least one independent person whose views must be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 5.2 Members who have had an allegation made against them may, if they wish, also seek the views of the independent person.
- 5.3 The section prevents members, officers, their relatives or friends from being appointed as an independent person. (This restriction extends to members and officers of parish councils that have adopted the code of conduct of its principal authority.)
- 5.4 Note that the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) (Amendment) Order 2012 (*SI 2012/1714*), which came into force on 3 July 2012, allows an independent chairman or member of the authority's standards committee to be appointed as an independent person but limits their holding of that office until 30 June 2013.

6. SANCTIONS FOR BREACH OF CODE OF CONDUCT

- 6.1 The Localism Act 2011 does not give a relevant authority (or its standards committee) any power to impose sanctions for breach of its code, such as:
- Disqualification from office.
 - Withdrawal of monetary allowances payable under the [The Local Authorities \(Members' Allowances\) \(England\) Regulations 2003](#) (*SI 2003/1021*).
- 6.2 Therefore, it appears that possible sanctions may include:
- A formal letter to the member found to have breached the code.
 - Formal censure by motion.
 - Removal of the member from a committee or committees.
 - Adverse publicity.

7. REGISTER OF MEMBERS AND CO-OPTED MEMBERS' INTERESTS

- 7.1 [Section 29](#) requires of relevant authorities to:
- Establish and maintain a register of members' and co-opted members' interests.
 - Make the register available for inspection.

- Publish the register on the council's website.

7.2 The monitoring officer is also required to make the register of members' interests for town/parish councils in its area available for inspection and to publish it on the website of the principal council. If a parish council has its own website, they are also required to publish the register.

7.3 In contrast with the previous statutory model code of conduct that applied in England, there is no category of personal interests that have to be declared. It is for the relevant authority to determine what is entered in the authority's register, see *section 29(2), Localism Act 2011*.

8. DISCLOSURE OF PECUNIARY INTERESTS ON TAKING OFFICE

8.1 The Localism Act 2011 abolishes the concepts of personal and prejudicial interests and introduces, through the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012 \(SI 2012/1464\)](#) (2012 Regulations) which came into force on 1 July 2012, defined disclosable pecuniary interests.

8.2 Under [section 30](#) of the Localism Act 2011, a member or co-opted member of a relevant authority must, within 28 days of becoming a member, notify the monitoring officer of any disclosable interests that they, their spouse or civil partner they live with, have.

8.3 The 2012 Regulations specify the pecuniary interests that members and co-opted members of relevant authorities are required to include in the register of interests maintained by an authority. These include any:

- Employment, office, trade, profession or vocation that the member carries on for profit or gain.
- Contract between the member and the member's local authority under which goods or services are to be provided or works are to be executed and that has not been fully discharged.
- Beneficial interest in land that is within the authority's area.

8.4 Apart from disclosing such interests on the register, [section 31](#) requires a member to disclose a disclosable pecuniary interest of which the member is aware, at a meeting, or if the member is discharging the relevant authority's function acting alone, where any matter to be considered relates to that interest. (Note that where the relevant authority is operating executive arrangements under Part 1A of the [Local Government Act 2000](#), as is the case at Tameside, the reference to "a meeting of the authority, any committee, joint committee or joint sub-committee" includes a reference to the authority's executive and to a committee of the executive.)

8.5 If the interest is not registered, or is subject to a pending notification, the member must notify the monitoring officer of the interest within 28 days. In these circumstances, the member is prohibited from participating in the discussion at the meeting, or voting on any matter relating to their interest or, if acting alone, from taking any steps in relation to the issue unless they have a [dispensation](#) under section 33 of the Localism Act.

8.6 Whether the member must also leave the room during a debate and vote on the issue is for the relevant authority to determine by means of standing orders (*section 31(10)*). The two exceptions to the requirement on a member to disclose a disclosable pecuniary interest at a meeting are:

- Sensitive interests under [section 32](#).
- Dispensations under [section 33](#).

Sensitive interests

- 8.7 The definition of a sensitive interest in section 32(1)(b) refers to the nature of the member's interest being such that the member and the authority's monitoring officer consider that disclosure of the interest could lead to the member, or a person connected with them, being subjected to violence or intimidation. Therefore, if the monitoring officer agrees, the member merely has to disclose the existence of an interest, rather than the detail of the interest, at a meeting and monitoring officer can exclude the detail of the interest from the published version of the register of members' interests.

Dispensation

- 8.8 The provisions on dispensation were significantly changed by the Localism Act 2011. Under [section 33](#), a relevant authority is empowered, upon written request, to grant dispensations for up to four years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest if, having had regard to all relevant circumstances, it considers that:

- Not granting the dispensation is likely to impede the particular business transaction.
- Without the dispensation, the representation of different political groups on the body would be so upset as to alter the outcome of any vote on the matter.
- The granting of the dispensation is in the interests of individuals living in the authority's area.
- Where the authority is one to which Part 1A of the [Local Government Act 2000](#) applies, not granting the dispensation would prevent each member of the authority's executive from participating in the business of the executive.
- It is otherwise appropriate to grant a dispensation.

9. CRIMINAL OFFENCES

- 9.1 [Section 34](#) creates a criminal offence where a member of a relevant authority:
- Fails, without reasonable excuse to comply with requirements under sections 30 or 31 of the Localism Act 2011 to register or declare disclosable pecuniary interests.
 - Takes part in council business at meetings (or when acting alone).
- 9.2 The section empowers the magistrates' court, upon conviction, to:
- Impose a fine of up to level 5 – currently £5,000.
 - Make an order disqualifying the individual from being a member of a relevant authority for up to five years.
- 9.3 The prosecution must be brought by, or on behalf of, the Director of Public Prosecutions (DPP) and must be brought within:
- Twelve months of the DPP having the evidence to warrant prosecution.
 - Three years of the commission of the offence being committed.

10. COMMON LAW CRIMINAL OFFENCE OF MISCONDUCT IN PUBLIC OFFICE: ENGLAND AND WALES

- 10.1 Misconduct that breaches a code of conduct could also constitute the common law criminal offence of misconduct in a public office, which covers a wide range of conduct. It is a very serious, indictable-only offence carrying a maximum sentence of life imprisonment. The offence is reserved for cases of serious misconduct or deliberate failure to perform a duty that is likely to injure the public interest.
- 10.2 The elements of this offence were restated in *Attorney-General's Reference (No 3 of 2003)* [2004] EWCA Crim 868 as:
- A public officer, acting in that capacity.

- Wilfully neglecting to perform their duty (or wilfully misconducting themselves).
- To such a degree as to amount to an abuse of the public's trust in the office holder.
- Without reasonable excuse or justification.
- To establish wilful neglect or misconduct by a member, there has to be:
 - an awareness of the duty to act; or
 - subjective recklessness about the existence of the duty.

10.3 The test is subjective, so the member is judged by his own standards. Before a member can be considered to be liable, they must be aware of the risk that they are running. The knowledge or appreciation of risk of some damage must have entered the member's mind, even though he may have suppressed it. The defendant's motive and the likely consequences of the breach (viewed subjectively) may be relevant to assessing whether an individual member's conduct is so far below acceptable standards that it amounts to an abuse of the public's trust in the member.

10.4 Any decision to proceed with a charge of misconduct in public office is likely to be influenced by whether the alleged acts can be dealt with properly by any available statutory offence. In *R v Sprechley* [2004] EWCA Crim 3067, the leader of the council was found to have dishonestly failed to disclose an interest when pressing for a particular route for a road that passed near land owned by him. The value of his land would have increased as a result of the proposal. He was sentenced to 18 months' imprisonment and ordered to pay £25,000 costs (on appeal, this was reduced to £10,000). In attempting to influence the route, his motivation was dishonest in that he was motivated by considerations of personal advantage to a significant degree.