

## Changes to the Standards Regime

### Proposals for the Way Forward Post Enactment of the Localism Bill

#### 1. Current Position

- 1.1 Members will be aware that the Council, like all other councils, is required by law to adopt a Model Code of Conduct, based on regulations issued under the Local Government Act 2000. The Model Code of Conduct places various obligations on Members to disclose personal and prejudicial interests; to treat others with respect; not do anything that breaches equalities legislation; not to bully any person; not to intimidate or attempt to intimidate any person; not to do anything which comprises or is like to comprise the impartiality of those who work for or on behalf of the Authority; not to disclose information given in confidence by anyone (subject to exceptions); not to conduct themselves in a manner which could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute; not to use their position as a Member improperly to confer or secure on themselves an advantage or disadvantage; to comply with the Authority's rules when using the resources of the Authority and not to use such resources improperly or for political purposes.
- 1.2 In essence, the Code seeks to apply certain standards to Member involvement and behaviours in local authorities. These obligations are broadly based on the obligation of Members to serve the public interest, rather than their own interests. The focus is to require members to behave in a way that enhances public perception and confidence in those who occupy public positions of power and who have control over tax payers' money.
- 1.3 The Council fully complies with its statutory obligations and maintains a statutory Standards Committee, which hears and determines complaints of a breach of the Code of Conduct. The Standards Committee currently has statutory sanctions it can apply to Members, which include suspension for up to six months, censure, apology etc.

- 1.4 Should breaches be serious, these may be referred to the national body, Standards for England, who have separate more extensive powers to investigate and refer allegations to the national First Tier Tribunal, for it to determine whether a breach has occurred and to issue sanctions. The First Tier Tribunal has more extensive powers than local committees and can, for example, disqualify Members for up to five years.

## 2. Current Statutory Proposals

- 2.1 The Coalition Agreement "*Our Programme for Government*" proposed the abolition of the Standards regime. The context of this was concerns about the current Standards regime's alignment with the Coalition Government's localism agenda and concerns about the perception of an overly bureaucratic and costly regime as it currently stands. There were also concerns about the Standards regime being used by Members for political purposes, rather than the purposes intended by the Model Code.

- 2.2 The Coalition Government's intentions in this respect appear in the Localism Bill. The Bill proposes radical abolition of the Standards Regime including:

- Abolition of the National Standards Board for England
- Abolition of the requirement to have a Standards Committee
- Abolition of formal sanctions available to the Standards Committee

- 2.3 However, in the proposals in the Localism Bill as they currently stand:

- Councils will be under a duty to provide and maintain high standards of conduct. It is not currently prescribed how this is to happen.
- Councils will be able to either:
  - adopt a voluntary Model Code of Conduct based on the current Code;

- adopt a modified Code; or
  
  - adopt a new Code.
- It will really be up to the councils concerned to decide if they want a Model Code of Conduct and, if so, what this should look like. However, councils adopting a Code will no longer have the formal powers currently available to them, such as the power to suspend Members. It appears that the only power they will have will be a power of censure.
  
  - Members will still be required to disclose interests in a register and to not participate in decisions involving those interests. However, the detail of the type of interest involved will be specified in regulations post enactment of the Localism Bill. Breaches of this provision will become criminal offences prosecuted by the Director for Public Prosecutions.
  
  - The Councils' Monitoring Officers will have an obligation to establish and maintain a register of interests, specified by the regulations, discussed above.
- 2.4 Transitional provisions will apply once the Localism Bill becomes an Act and complaints will continue to be heard by the Standards Committee until an "appointed day" following which new complaints will not be able to be taken through the old regime. However, those already in the system will continue to conclusion.

### **3. What Happens Post Enactment of the Localism Bill?**

- 3.1 Subject to the enactment of the Bill as it currently stands the Council could, legitimately decide to abolish the Standards Regime and do the minimum to comply with the requirements of the Localism Bill, for example, by maintaining a register of interests and using current Committee structures, as opposed to a dedicated Standards Committee, to promote ethical conduct within the Council.

- 3.2 This Council's record on ethical conduct of Members is relatively good and has been on an improvement path. In governance terms, it is important for the Council to be able to demonstrate to its tax payers and other stakeholders that its systems, processes and behaviours comply to the highest ethical standards, which puts their interests first.
- 3.3 Reputationally, it is important for the Council to promote the highest ethical conduct of its Members, which will improve the public's perception of them and the Council.
- 3.4 The Council cannot agree at this stage the details of the way forward, because this is all predicated on the Localism Bill being enacted in its current form. Further, even post enactment of the Bill, a lot of detail in terms of implementation of the Standards regime will be through secondary legislation and regulations. However, the Council needs to proactively consider broadly the way forward leading up to the Bill's enactment and to agree some principles going forward:
- Does the Council support a strong ethical framework for Members?
  - Should the Council adopt a Model Code of Conduct?
  - If so, how would it look? Does it need modification as it currently stands or should it remain the same?
  - Should the Council maintain a Standards Committee? If so, should the Standards Committee still have independent representation?
  - Should the focus of the Standards Committee post the Localism Bill focus its attentions on strategic ethical governance, in order to raise awareness and buy in into proper standards of ethical conduct (as opposed to enforcement)?
  - Should the Model Code of Conduct be based on what other Local Authorities propose? For example, Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life, stated

*“In the Committee’s view it is essential that there remains a national Code of Conduct so that both Councillors and – most importantly – the public can judge what is acceptable behaviour and what is not. Leaving up to each local authority to decide whether to have their own code and – if so – what it should contain, risks confusion. National Codes of Conduct govern the behaviours of MPs, civil servants and others in public life. Why are Councillors judged to be different?”*

3.5 Ultimately, post enactment of the Localism Bill, Full Council will need to decide the way forward. However, it would be useful for the Group Leaders to agree some broad principles, going forwards, to guide the Monitoring Officer, Standards Committee and senior managers on the way forward, in preparation for the abolition of the current Standards regime.

#### **4. Monitoring Officer Recommendations:**

4.1 That the Group Leaders generally support a strong ethical conduct regime post the enactment of the Localism Bill, based on the broad principles outlined above.

4.2 Note that the Monitoring Officer will engage the Standards Committee on the future of the Standards Regime at the Council, based on the principles agreed by the Group Leaders.

4.3 Notes that any changes will need to comply with the Localism Bill as enacted and that changes will need Full Council approval in due course.

***N.B. The Localism Bill is currently in the House of Lords. At the time of writing this paper, the Lords are considering amendments to the bill which amongst other things, will make it obligatory for Councils to adopt a code; maintain the power of Local Authorities to suspend Members found guilty of serious misconduct; require Councils to have a Standards Committee. Whether these amendments are adopted remain to be seen.***

**Francis Fernandes**

**Borough Solicitor**

15 September 2011