

EAST HERTS COUNCIL

STANDARDS COMMITTEE- 14 MARCH 2012

REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES AND  
MONITORING OFFICER

THE LOCALISM ACT 2011 – PROPOSALS BY THE CHAIRMAN OF THE  
STANDARDS COMMITTEE FOR THE NEW STANDARDS REGIME

WARDS AFFECTED: ALL

**Purpose/Summary of Report**

**RECOMMENDATION FOR COUNCIL :**

1.0 Background

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.
- 1.2 This report describes the changes and recommends the actions required for Council to implement the new regime.
- 1.3 The Authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.
- 1.4 The Chairman of the Committee has prepared a draft Members' Code of Conduct and proposals to administer the new standards regime at **Essential Reference Paper B**. The Committee is requested to consider these proposals and make recommendations to Council.

## 2.0 Report

### 2.1 Standards Committee

2.2 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work. It is likely to remain convenient to have a Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result:–

- (a) The composition of the Committee will be governed by proportionality, unless the Council votes otherwise with no Member voting against. The present restriction to appoint only one Member of the Executive on the Standards Committee will cease to apply;
- (b) The current co-opted independent Members will cease to hold office. The Act establishes for a new category of Independent Persons who must be consulted at various stages, but provides that the existing co-opted independent Members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meeting so the Standards Committee, but are unlikely to be co-opted onto the Committee;
- (c) Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish/Town Councils, but the current Parish/Town Council representatives cease to hold office. Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants.
- (d) The choices include establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish/Town Council representatives (which could then only make recommendations in respect of Parish/Town Council Members), or establishing a Standards Committee as a Joint Committee with the Parish/Town Councils within the District (or as many of them as wish to participate) and having a set number of Parish/Town Council representatives as voting Members of the Committee (which could then take operative decisions in respect of Members of Parish/Town Councils, where the Parish/Town Council had

delegated such powers to such a Joint Standards Committee). The Chairman of the Committee has put forward an alternative with an Advisory Committee.

- 2.2 Therefore, Council will need to decide whether to set up a Standards Committee and determine how it is to be composed.
- 2.3 The Code of Conduct
- 2.4 The current ten General Principles and Model Code of Conduct will be repealed, and Members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –
  - (a) Selflessness
  - (b) Integrity
  - (c) Objectivity
  - (d) Accountability
  - (e) Openness
  - (f) Honesty
  - (g) Leadership
- 2.5 Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not yet possible to draft Code provisions which reflect the definition of DPIs which will appear in regulations.
- 2.6 The Act's provisions prohibits Members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring Members to withdraw from the meeting room.
- 2.7 Council has to decide what it will include in its Code of Conduct

### 3.0 Dealing with Misconduct Complaints

#### 3.1 “Arrangements”

3.1.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Parish/Town Council Members, and such complaints can be dealt with only in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

#### 4.0 Independent Person(s)

4.1 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

#### 4.2 “Independence”

4.2.1 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all Members of the District Council (not just of those present and voting).

4.2.2 A person is considered not to be “independent” if:

- (a) he is, or has been within the last 5 years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area;
- (b) he is, or has been within the last 5 years, an elected or co-opted Member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent Members of Standards Committee from being appointed as an Independent Person); or
- (c) he is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or cop-opted Member of any Committee or Sub-Committee of such Council.

4.2.3 For this purpose, “relative” comprises –

- (a) the candidate's spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate's grandparent;
- (d) any person who is a lineal descendent of the candidate's grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e);  
or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

#### 4.3 Functions of the Independent Person

##### 4.3.1 The functions of the Independent Person(s) are –

- (a) They must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- (b) They may be consulted by the authority in respect of a standards complaint at any other stage; and
- (c) They may be consulted by a Member or co-opted Member of the District Council or of a Parish/Town Council against whom a complaint has been made.

#### 5.1 The Register of Members' interests

5.2 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and

available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish/Town Councils, which also has to be open for inspection at the District Council offices and on the District Council's website.

- 5.3 At present it is not known what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.
- 5.4 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 5.5 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish/Town Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish/Town Council has a website, provide the Parish/Town Council with the information required to enable the Parish/Town Council to put the current register on its own website.
- 6.0 The Committee is requested to consider the Chairman's proposals and make recommendations to Council.
- 7.0 Implications/Consultations
- 7.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

## Background Papers

Localism Act 2011

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ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i>	<b>Fit for purpose, services fit for you</b> <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i>  <b>Leading the way, working together</b> <i>Deliver responsible community leadership that engages with our partners and the public.</i>
Consultation:	-
Legal:	Legal implications are discussed in the report.
Financial:	None.
Human Resource:	Not applicable.
Risk Management:	The Council is required to apply the governance provisions contained in the Localism Act 2011.

[Text in square brackets, as here, is explanatory for the benefit of those reviewing the draft – to be omitted from the definitive version. Text between ligatures {EHDC: ... } and {TP: ... } are variants respectively for the District or as a model code for the Towns and Parishes, the intention being that the Code given to a member will have only the forms of words appropriate to that member's council.]

## **[DRAFT] MEMBERS' CODE OF CONDUCT**

### **Introduction**

1. Section 27 of the Localism Act 2011 lays upon authorities *a duty to promote and maintain high standards of conduct*. Section 28 requires each authority to have a Code of Conduct. You are accountable to the Council for compliance with the Code when you act, or purport to act, or might reasonably be believed by others to be acting, in your role as a member. Your role as a member includes any additional council duties or offices undertaken by you. The accountability does not extend to conduct in private life.
2. Subsection 28(1) of the Act requires the Code to be consistent with the principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. To those, the Council adds other general requirements derived by extension from those principles: Regard for others, Independence of judgement, Respect for the law, and Stewardship of the Authority's resources.
3. The Code is in two parts. The first deals with general provisions and obligations. The second relates to the Act's requirements (Sections 29 to 34) regarding members' *interests other than pecuniary interests* and *pecuniary interests*. This categorisation replaces the earlier *personal interests* and *personal and prejudicial interests*. Failures to register or to declare interests or otherwise to fail to observe the related provisions of the Act are now potentially criminal offences. Some obligations in the first part of the Code also relate to potentially unlawful conduct. The Code aims both to discourage conduct that might make members or the Council itself liable in law; and also to signal the unacceptability of breaches that do occur and are below the threshold for legal action. Members cannot be required, as a condition of office, to be bound by the Code, but you will be deemed to have read the Code and to be aware that {EHDC: the Council is required, by Subsection 27(6) of the Act, to provide for complaints alleging breaches of the Code to be determined, after, if necessary, investigation}{TP: East Herts District Council, as the Principal Authority for this Council, has the duty to receive and to determine, after any necessary investigation, complaints alleging breaches of this Code by members of this Council}. The procedures for making a complaint and for the subsequent handling of a complaint, including actions that might follow a finding that the Code has been breached, are published on the EHDC website, and are available from the EHDC Offices, and from the Clerk of each of those Town or Parish Councils for which EHDC is the Principal Authority.

### **Part 1**

#### **General provisions and obligations**

4. When you represent the Council —

- (a) on another 'relevant authority', as defined in Subsection 27(6) of the Act, you must, in the conduct of that authority's business, comply with any necessary provisions of that authority's code of conduct; *or*
  - (b) on any body other than a 'relevant authority', you must, when acting for that other body, comply with this Council's Code of Conduct, except and insofar as it conflicts with any over-riding lawful obligations of that other body. If such a conflict arises or seems likely to arise, the guidance of this Council's Monitoring Officer should be sought.
- 5. By leadership and example, you should assist the Council to fulfil its duty in law to promote and maintain high standards of conduct. To that end you must—
  - (a) aim to uphold the law and not do, or connive with or at others in doing, anything unlawful;
  - (b) comply with the Council's standing orders and with any relevant guidance that may be issued from time to time, including codes and protocols;
  - (c) at no time, in your role as a member and in the performance of your Council duties, conduct yourself in a manner that might reasonably be regarded as bringing, or being likely to bring, into disrepute you yourself, in your office of member, or the Council.
- 6. You should aim to promote equality and must treat others with respect and with due regard for them and to their rights as individuals.  
In particular, you must not—
  - (a) in any way discriminate, or indicate a disposition to discriminate, on grounds of sex or sexual orientation, or of nationality, race, creed, disability or age. Nor should you do anything that might cause the Council itself to be liable under any of the provisions of the Equality Act 2010);
  - (b) bully, harass or treat in an oppressive manner any person or persons;
  - (c) intimidate or attempt to intimidate any person who is or might be (i) a complainant that any member has breached the Council's Code of Conduct, or (ii) a witness or potential source of other material evidence regarding such an allegation, or (iii) in any other way actually or potentially involved in the administration of any investigation or proceedings in relation to an allegation of misconduct;
  - (d) do anything that compromises or is likely to compromise the impartiality, integrity and objectivity of those who work for, or on behalf of, the Council.
- 7. You must not disclose information, whether communicated to you or that comes to your notice in any other way, that is explicitly confidential or that you ought reasonably to be aware is of a confidential nature, unless—
  - (a) you have the consent of an appropriately authorised person; *or*
  - (b) disclosure is required by law; *or*
  - (c) the disclosure is necessarily made to a third party for the purpose of obtaining professional advice and provided that the third party agrees not to disclose the information to any other person; *or*
  - (d) the disclosure is reasonable, in the public interest, made in good faith and in compliance with the Council's policies or protocols on whistle-blowing and

confidential information. For protection by the Public Interest Disclosure Act 1988 to apply, you must first have raised your concerns through the appropriate internal machinery {EHDC: see the Council's Disclosure Code}.

8. You must not impede or prevent another person from gaining access to information to which that person is entitled by law.
9. You must not use, or attempt to use, your position to gain financial or other material benefits for yourself, your family, or your friends.
10. You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
11. When using, or authorising or agreeing to others' use, of the resources of your authority, you must—
  - (a) act in accordance with the Council's reasonable requirements and so far as possible ensure that the Council uses its resources prudently and in accordance with the law.;
  - (b) ensure that the Council's resources are not used improperly for political purposes (including party political purposes).
12. When reaching decisions on any matter you must—
  - (a) exercise independent judgement and act solely in the public interest;
  - (b) have in mind that a Council decision might be open to challenge on grounds of predetermination if a member (or members) involved in the decision had, or might reasonably be thought by a disinterested observer to have, a closed mind at the time the decision was taken. To avoid predetermination, even if beforehand you have expressed a strong view on the matter or indicated how you were minded to vote, you should keep an open mind about matters for decision, having regard for all the facts and advice from officers and weighing others' views, and ideally demonstrate that open-mindedness in discussion;
  - (c) heed any relevant advice provided to you by the {EHDC: Council's Chief Executive, Chief Finance Officer or Monitoring Officer where that officer is acting pursuant to his or her statutory duties}{PT: the Council's Clerk}.
13. As a holder of public office, you are accountable to the public and you should—
  - (a) aim to be open about decisions and actions that you take or to which you are a party;
  - (b) restrict such communication only when required by law or the confidentiality of information or justified by the wider public interest;
  - (c) make clear in communication with members of the public and especially with representatives of the media, whether you are expressing personal views or speaking in any way on behalf of the Council;{EHDC: (d) have regard to the Council's Code of Publicity, in particular if you initiate the communication by, for example, writing a letter to a newspaper.}

## Part 2

[To be inserted when/if regulations are issued.]

## [DRAFT Version 3]

### Outline Proposals for a new standards regime

The Authority must have a Code of Conduct. Given that the current Code is well-known to all concerned (or should be) and, during the period of its application, has given rise to no major problems, the obvious option is to keep its general form, with changes to reflect the new regime and experience with the current one. A draft is appended.

#### **Town/Parish Codes:**

Town and parish councils must have a code but are free to adopt any code consistent with the Act. Those for which EHDC is responsible, as the 'Principal Authority', should be encouraged to use the one adopted by EHDC, otherwise there may be problems for the EHDC administrative system, charged with following up complaints against town and parish councillors for breaches of an idiosyncratic Code. Incentives: (a) town and parish councils should be consulted on the proposed EHDC code while it is in draft; (b) they should be warned that, if they adopt a non-standard code of their own, they will have to publicise it initially at their own expense (presumably EHDC will issue a notice in the Mercury etc and could simply add to it the names of all the towns and parishes that subscribe to the standard version) and arrange for it to be made available locally, and (c) copies of non-standard versions would be need to be lodged with the Monitoring Officer.

#### **Administration:**

The Act Subsection 28(6) requires the Authority to make arrangements for processing complaints of breaches of the Code(s) (including those relating to town and parish councillors). The debate in the House of Lords was clear that there should be strong independent involvement. What was hastily contrived in Subsections 28(7) and (8) – for an 'Independent Person' to be appointed – does not provide that. To have a Standards Committee composed entirely of members would (rightly) attract public ridicule, contempt and outrage. To have a committee with co-opted members, who could neither vote nor chair the committee, would be little better and would have the additional implausibility in that it is most unlikely that anyone would stomach acting as a powerless co-opted member.

The logic is to have an Advisory Committee, under Subsection 102(4) of the LGA of 1972 (as amended), with a strong independent membership with voting rights, which would operate, in dealing with complaints, in much the same manner as at present but advising (say) the full Council that e.g., a complaint (set out in summary) by X against councillor Y was found to require no further action, or that specified other action should be taken, either with regard to the subject member or, on advice by the Standards Committee, to address systemic or cultural issues, or that the subject member should be censured perhaps with a level of severity suggested on a scale of I to V and, if need be, recommending any further sanctions directly or indirectly available to the Council, such as removal from committees or the executive. The primary role of the 'Independent Person' would be to act as assessor to the Council, to assist it in deciding whether to accept the Advisory Committee's advice and would be fully consistent with the Act's requirement (28(7)(a)). An arrangement along these lines would give the Council (as a body) ownership of its own

Code of Conduct and challenge it to set its own standards publicly by its responses to the Committee's advice.

The Committee's advice, the Assessor's opinion and the Council's response would be published on the Council's website (and perhaps a press-release made, but not a paid-for notice in the press) and a searchable database maintained of all complaints and the outcome, so that (a) if the Council were to take the line that it would simply routinely or wilfully disregard the Committee's advice, it would risk bringing itself into disrepute; and (b) there would be a source of information about councillors to refresh electors' memories in due course. Town and Parish Councils that chose to disregard advice would themselves risk being complained against. There should be provision for the Committee itself to originate complaints.

A system of the sort described in outline could, even in the limited time still available, be worked up to provide the necessary detailed procedures that would be followed and made public. The alternative, of continuing to wait for some other body to produce a model system, seriously risks the Council finding itself with no choice but to accept whatever eventually turns up, having had no say in its development and thus re-running the nonsenses of recent years (or struggling with new ones).

In terms of practicalities, the present Standards Committee might be invited to remain in office for the time being but reconstituted, after the appointed date of 1 July, as a Joint (i.e. EHDC *plus* towns and parishes) Advisory Committee on Standards of Conduct, charged with the management, implementation and initial operation during the first year of a new system.

The Committee might in the longer term have representation on the same basis as at present: four members from the Council; three (preferably four) town and parish representatives to be appointed by those councils, plus four independent members including a Chairman and a Vice-Chairman. The Act's 'Independent Person or Persons' would be appointed as Assessor(s) to the Council(s) (as above) and as existing independent members' terms expire, might be in line to become independent members of the Committee. There should at any time be at least two 'Independent Persons', since otherwise paralysing conflicts of interest might arise or be contrived. There need not be an inevitable career path but there would be the practical benefit of providing, with one public notice, a way to meet the requirement of the Act (28(8)(c) and maintaining the present open system for appointing independent members to the Committee. The legislation, while requiring the appointment of 'Independent Persons', with 'independence' defined in strangely rigorous terms, and with a defined remit, does not seem, even by implication, to rule out independent persons, not appointed in the prescribed manner, being members of an advisory committee with other remits. That assumption is obviously pivotal to what is proposed by way of a transitional regimen. The primary (mandatory) role for the independent persons would be enabled by a right to attend any meetings of the Committee or its subcommittees, without voting rights, to receive all papers, and to submit opinions (on the Committee's advice) to the Council(s).

Provision would need to be made, in the term of the Act (28(7)(ii-iii)), for subject members, if they so wished, to consult an 'Independent Person': that duty could be a very fraught and potentially open to serious abuse.

The processes of assessment and hearing should continue on much the same procedural lines as at present, except that (a) the right of appeal by complainants would be abolished and (b) hearings would be conducted by a subcommittee of all the independent members. The procedure should be flexible enough to take account of (e.g.) complaints where the facts were not in serious doubt and might indeed be admitted by the subject member and a summary decision made on whether there had been a minor breach of the Code. More serious or contested cases would require investigation.

The system would need (a) to identify and distinguish those cases where either the fault was a personal one of ignorance (to be treated summarily, on first offence, by warnings or, if appropriate, by inviting apology) or there was wilful disregard for the Code and/or serial offending (to be dealt with by 'naming and shaming' in a way that could impact seriously on offenders); (b) to identify systemic or cultural problems that should be addressed initially by the Standards Committee and then, subject to the Committee so advising, by the Council.

Unless persuasive arguments were provided to the contrary, the complaint should, on receipt by the Monitoring Officer, be immediately communicated to the subject member, with an invitation to him or her to respond, e.g., by submitting a rebuttal. That provision would immediately remove a major flaw in the present system. Any complaint properly made should be promptly assessed by the Assessment SC and then an option would be to refer back to the Monitoring Officer for 'other action', which would necessarily be limited, so far as the subject member was concerned, to offers of advice or guidance. The Council would need to delegate to the Monitoring Officer the power to act, at the request of the Subcommittee, in limited ways – say, issuing a caution or seeking an apology as a way to settle a grievance. If the subject member refused to co-operate, he would be charged with an additional offence and go back into the system. That would remove a second current flaw. Presumably complaints concerning failures to register or declare 'interests' in the terms of the Act, would not be referred to the Subcommittee unless and until it was clear that the DPP had set a threshold for prosecution that left minor infringements to be dealt with locally.

The process of investigation needs to be reconsidered and fundamentally changed and the completion of the entire process, from receipt of a complaint onwards, streamlined and condensed drastically, to save time and money while maintaining fairness.

The Committee itself, in addition to reporting to the Council on systemic, organisational or cultural issues emerging from case-work, might usefully maintain an overview of ethical governance, including reviewing relevant codes and protocols, and reporting at least annually to the Council (and town and parish councils) and otherwise as occasion arises.