

**WEST MIDLANDS FIRE AND RESCUE AUTHORITY**

**STANDARDS COMMITTEE**

**9 JANUARY 2012**

1. **THE LOCALISM ACT 2011 - THE NEW STANDARDS  
FRAMEWORK**

Report of the Clerk to the Authority and Monitoring Officer

**RECOMMENDED**

That the Standards Committee consider the provisions set out in the Localism Act 2011 in relation to standards and consider what recommendations it might make to the Authority to implement a new framework for standards.

That the Clerk to the Authority bring further reports to the Standards Committee.

2. **PURPOSE OF REPORT**

2.1 The purpose of this report is to inform the Standards Committee of the Localism Act 2011 and the fundamental changes it brings into the system of regulation of standards of conduct for elected and co-opted Councillors.

2.2 The report highlights the areas where the Authority will need to take decisions to implement a new framework for standards informed by any recommendations made by the Standards Committee.

3. **BACKGROUND**

3.1 The Localism Act 2011 ("the Act") received Royal Assent on 15<sup>th</sup> November 2011. Chapter 7 is called "Standards" and deals with how the conduct of local authority members and co-opted members is to be regulated. The provisions apply to fire and rescue authorities in England.

3.2 The Act repeals the relevant sections of the Local Government Act

2000 and the subordinate legislation, thereby abolishing Standards for England, the national regulator, the national code of conduct and the statutory standards committees.

- 3.3 The Act places a general obligation on the Authority to promote and maintain high standards of conduct by members (and any voting co-opted members).
- 3.4 The Standards Committee and members of the Authority may have views on how this should be achieved, what Code and framework should be adopted and what information and training members should receive whether through their constituent host authorities or at the Authority itself.
- 3.5 The Authority, at a full meeting of the Authority, must adopt a Code of Conduct expected of members and voting co-opted members of the Authority when acting in that capacity.
- 3.6 The Code adopted by the Authority must be consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 3.7 Regulations to be made under the Act will require the registration and disclosure of disclosable pecuniary interests. The Act also requires the Authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 3.8 The duty to ensure consistency with the list of principles and to make provision for the registration and disclosure of interests (including disclosable pecuniary interests) does not mean that the Code cannot cover other issues.
- 3.9 The Standards Committee and members of the Authority will have to consider what the Authority should/will include in its Code of Conduct. For example, how much of the current personal and prejudicial interests provisions, should be included in the Code? The Clerk and Monitoring Officer can start preparing a draft Code following such guidance from members and publication of the Regulations defining disclosable pecuniary interests.
- 3.10 The Authority must publicise the adoption, revision or replacement of the Code in such a way that will bring it to the attention of persons who live in the area.
- 3.11 The Standards Committee and members of the Authority might

consider such notification on the website and through local newspapers to be appropriate.

- 3.12 The Monitoring Officer must establish and maintain a register of members' interests, and it is for the Authority to determine what is to be entered in that register. No entries should be retained on the register if the interest no longer exists or the person concerned is no longer a member. The Monitoring Officer must ensure that the register is available for public inspection and on the Authority's website.
- 3.13 Members are obliged within 28 days of being appointed as a member or voting co-opted member to notify the Monitoring Officer of a "disclosable pecuniary interest" held at the time of notification. Regulations will determine what is to count as a disclosable pecuniary interest. It will include the interests of members themselves and (if the member is aware of the interest) those of their spouse, civil partner, or any person living with them as their spouse or civil partner. The Monitoring Officer must then ensure that it appears in the register.
- 3.14 Failure to register a disclosable pecuniary interest within 28 days is made a criminal offence, but would not prevent the member from acting as a member. As far as the registration of other interests required by the Authority are concerned, failure to do so would not be a criminal offence but would be a failure to comply with the Code of Conduct.
- 3.15 There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
- 3.16 A duty to disclose and withdraw arises whenever a member attends any meeting of the Authority, a Committee or Sub-Committee, or of the Executive or an Executive Committee and is aware that he/she has a disclosable personal interest in any matter being considered at the meeting. Where these conditions are met, the member must disclose the interest to the meeting (ie declare the existence and nature of the interest). The member does not have to make such a disclosure if he/she has already registered the disclosable pecuniary interest, or at least sent off a request to the Monitoring Officer to register it (a "pending notification").

3.17 Where the member does make a disclosure of a disclosable public interest, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.

3.18 If a member has a disclosable public interest in any matter, he/she must not:

- participate in any discussion on the matter at the meeting;
- participate in any vote on the matter;

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

3.19 Failure to comply with the requirements relating to disclosure of interests and withdrawal from meetings becomes a criminal offence.

3.20 The Authority's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than disclosable pecuniary interests, but failure to comply with these requirements would be a breach of Code of Conduct and not a criminal offence.

3.21 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Authority, Committees and Sub-Committees, but can apply also to Executive and Executive Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

3.22 The Standards Committee and members of the Authority need to consider what Standing Order the Authority should adopt in respect of withdrawal from meetings for interests. Should a member withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a disclosable pecuniary interest, except where he is permitted to remain as a result of the grant of a dispensation.

3.23 Where a member is concerned that disclosure of the detail of an interest (either a disclosable pecuniary interest or any other interest which he/she would be required to disclose) at a meeting or on the register of members' interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree

that the interest is a “sensitive interest”. If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members’ interests.

3.24 Under the Act, a dispensation will be able to be granted in the following circumstances:

- that so many members of the decision-making body have disclosable pecuniary interests in a matter that it would “impede the transaction of the business” ie the decision-making body would be inquorate;
- that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- that the Authority considers that the dispensation is in the interests of persons living in the Authority’s area;
- that, without a dispensation, no member of the Executive would be able to participate on this matter; or
- that the Authority considers that it is otherwise appropriate to grant a dispensation.

3.25 Any grant of a dispensation must specify how long it lasts for, up to a maximum of four years.

3.26 The Act gives power to delegate the discretion to grant dispensations to Standards Committee or a Sub-committee, or to the Monitoring Officer. It can be seen that apart from the ground relating to a meeting being inquorate, the other grounds are quite subjective and therefore it may be appropriate that the discretion to grant dispensations remains with the Standards Committee, after consultation with the Independent Person. Standards Committee and members of the Authority will have to consider what arrangements would be appropriate for granting dispensations. Should the Authority delegate the exercise of this discretion to the Standards Committee, after consultation with the Independent Person? Should the discretion to grant the dispensation on the ground that otherwise the transaction of business would be impeded be delegated to the Monitoring Officer, with an appeal to the Standards Committee?

3.27 The Act provides that local authorities must have in place “arrangements” under which allegations of breach can be investigated and decisions on allegations can be made. Those provisions must include the appointment of at least one Independent Person whose views must be sought and taken into account before the Authority makes a decision on an allegation it has decided to investigate, and whose views may be sought on other allegations. The Independent Person’s views may also be sought by a member or co-opted member whose behaviour is the subject of an allegation.

3.28 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 Authority (not just of those present and voting).

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

- he is, or has been within the last five years, an elected or co-opted member or an officer of the Authority;
- he is, or has been within the last five years, an elected or co-opted member of any Committee or Sub-Committee of the Authority; or
- he is a relative or close friend of a current elected or co-opted member or officer of the Authority, or of any elected or co-opted member of any Committee or Sub-Committee of the Authority.

3.30 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.

3.31 The functions of the Independent Person(s) are:

- 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);
- they may be consulted by the Authority in respect of a standards complaint at any other stage; and
- they may be consulted by a member or co-opted member of the Authority against whom a complaint has been made.

3.32 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated.

3.33 As the Independent Person is not a member of the Authority or of its Committee or Sub-Committees, the remuneration (if any) can be determined without reference to the Independent Remuneration Panel.

3.34 Members of the Authority will have to decide what allowances and expenses to offer the Independent Person. A decision will also have to be taken on the process for advertisement, short listing and interview of candidates and to make a recommendation to Authority for appointment.

3.35 There is no requirement to have a Standards Committee but there is a need to deal with standards issues and case work so it may be advisable to have a Standards Committee. The composition of any such Committee will be governed by proportionality. The members of the Authority will have to decide whether to set up a Standards Committee, and how it is to be composed. The

Authority may, for example, wish to establish a committee dealing with standards, audit and governance.

3.36 The Act requires that the Authority adopt “arrangements” for dealing with complaints of breach of Code of Conduct and such complaints can only be dealt with 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. The Authority could delegate all or most of the “arrangements” to an officer, such as the Monitoring Officer, although the final decision about “taking action” should be reserved to members. If there were councillor-versus-councillor complaints it would place the officer under pressure. The “arrangements” will have to deal with points such as:

- the appointment of a Proper Officer to receive the complaints;
- the process to determine whether a complaint merits formal investigation and as appropriate to arrange such investigation;
- the resolution of complaints without formal investigation;
- the process to deal with the findings of an investigation (no failure to comply with the Code or failure to comply with the Code);
- hearings;
- actions following hearings where a member is found to have failed to comply with the Code (eg reporting finding to the Authority, recommending to the member’s Group Leader that he/she be removed from any or all Committees or Sub-Committees, or portfolio responsibilities, instructing the Monitoring Officer to arrange training, removing the member from all outside appointments to which he/she has been appointed or nominated by the Authority, withdrawing facilities provided to the member by the Authority, such as a computer, website and/or email and internet access; or excluding the member from the Authority’s offices or other premises, with the exception of meeting rooms as necessary for attending Authority, Committee and Sub-Committee meetings).



- 3.37 Any views expressed by the Standards Committee on the standards framework to be adopted will need wider discussion within the Authority ie Chair, Group Leaders, Policy Planning Forum, before adoption by the Authority. The Members Development Group will need to be involved in terms of member training and development needs.
- 3.38 The Government has said that the legislation in this regard will take effect in April 2012 but the Regulations about disclosable pecuniary interests have not yet been published.

#### 4. **EQUALITY IMPACT ASSESSMENT**

- 4.1 An Equality Impact Assessment has not been carried out as this report essentially contains an explanation of the new legislation and the steps required by the Authority to implement this. The Authority should nevertheless have due regard to the equalities duties when establishing its standards framework.

#### 5. **LEGAL IMPLICATIONS**

- 5.1 The Localism Act 2011 repeals the existing standards regime and establishes a new framework which allows for greater choice by the Authority. The details are set out in the Background section of this report.
- 5.2 There will be transitional arrangements for existing casework although to date there have been no complaints under the current legislation.

#### 6. **FINANCIAL IMPLICATIONS**

- 6.1 Implementation of the new legislation will require some additional work by officers and members although this and maintenance of the new framework are very unlikely to place any new significant financial pressures on the Authority.

**N SHARMA  
CLERK TO THE AUTHORITY  
AND MONITORING OFFICER**

**Background Papers**

Localism Act 2011

Localism Bill 2011 - Explanatory Notes

Bevan Brittan Template Report to Standards Committee