

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

25 JUNE 2012

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

Report of the Clerk to the Authority and Monitoring Officer

RECOMMENDED:-

- 1.1 That the Authority adopts a new Code of Conduct as attached as Appendix 1.
- 1.2 That the Monitoring Officer be instructed to recommend to Authority a Standing Order which equates to the current Code of Conduct requirement that a member must 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.
- 1.3 That the Independent Person(s) appointed by Sandwell Metropolitan Borough Council be appointed by the Authority and used in relation to alleged breaches of the Code of Conduct.
- 1.4 That a new Standards Committee be established to replace the existing Standards Committee with effect from 1st July 2012.
- 1.5 That the new Terms of Reference for the new Standards Committee be adopted as set out in Appendix 2.
- 1.6 That the Arrangements for dealing with standards allegations at Appendix 3 be adopted for addressing Code of Conduct complaints and any necessary investigations.
- 1.7 That the sanctions for any breaches by a Member of the Code of Conduct as set out at Appendix 4 be agreed.

- 1.8 That the Clerk and Monitoring Officer be authorised to make any necessary changes to any related constitutional documents, to reflect the decisions of the Authority on the above recommendations.

2. PURPOSE OF REPORT

- 2.1 The purpose of this report is to inform the Authority of the changes brought in by the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 to the framework of regulation of standards of conduct for elected and co-opted Members.
- 2.2 The report highlights areas where the authority needs to take decisions to implement a new framework for standards.

3. BACKGROUND

- 3.1 The Localism Act 2011 ("the Act") received Royal Assent on 15th 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 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.
- 3.5 The Code adopted by the Authority must be consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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 define disclosable pecuniary interests. The register 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 these appear in the register.
- 3.10 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.
- 3.11 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.
- 3.12 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”).

3.13 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.

3.14 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.

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

3.16 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.

3.17 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.

3.18 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.

3.19 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.

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

3.21 The Act gives power to delegate the discretion to grant dispensations to Standards Committee or a Sub-Committee, or to the Monitoring Officer.

3.22 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.

3.23 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).

3.24 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.

3.25 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.

3.26 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.

3.27 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.

3.28 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.

3.29 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.

3.30 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.

3.31 The current Standards Committee has considered the proposals contained in the Localism Act 2011 and the Policy Planning forum has also engaged in the discussions. The consensus view has

been that the Authority should adopt a Code which does not expand beyond the legal requirements. This view has been informed by the past history at the authority ie high standards of conduct and number of complaints.

- 3.32 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 were laid before Parliament on 8th June 2012 and came into force on 1st July 2012. These interests are very substantially derived from the existing Code of Conduct.
- 3.33 The Localism Act 2011 (Commencement No 6 and Transitional, Savings and Transitory Provisions) Order 2012 was made on 6th June 2012 and bring into force the new requirements from 1st July 2012. Transitional provisions mean that independent members of the Standards Committee are eligible to be appointed as the Independent Person if they are not a member or co-opted Member of the Standards Committee on 1 July 2012 but have held such a post at any time during the 5 years ending on 30 June 2012. Such appointments must take place before 1 July 2013.

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 and utilising 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 are 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

The Relevant Authorities (Disclosable Pecuniary Interests) Regulation
2012).