

STANDARDS COMMITTEE

12 JANUARY 2012

Present: Independent Members

K Emmons (Chair)
M Chowdhree

Councillors

K Crout, J Dhindsa, A Mortimer and S Rackett

Officers

Head of Legal & Property Services
Democratic Services Manager

1 ELECTION OF CHAIR

RESOLVED

that Ken Emmons be elected Chair for the remainder of the Municipal Year.

2 APOLOGIES FOR ABSENCE/COMMITTEE MEMBERSHIP

Apologies were received from Angela Bailey

3 DECLARATIONS OF INTEREST (IF ANY)

There were no disclosures of interest.

4 MINUTES

The minutes of the meeting held on 2nd March 2011 were submitted and signed.

5 STANDARDS UNDER THE LOCALISM ACT 2011

The Localism Act received Royal Assent on 15 November 2011. Whilst the provisions in the Act in relation to standards had not yet been brought into force, it was considered timely to advise members of the provisions of the Act and to start to prepare for the new regime.

The Head of Legal & Property Services presented a report setting out the requirements of the Act and making a number of recommendations that would need to be considered by both the Constitution Working Party and Council. She explained that the Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1st July 2012.

The current ten General Principles and Model Code of Conduct would be repealed and Members would no longer have to give an undertaking to comply with the Code of Conduct. The Council would, however, be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity.

Regulations to be made under the Act would require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs) which were expected to broadly equate to the current prejudicial interests. The provisions of the Act also required an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. It was not possible to draft Code provisions until the regulations were available. This committee was therefore being asked to instruct the Head of Legal and Property to prepare a draft Code which required registration and disclosure of those interests which would today amount to personal and/or prejudicial interests but only require withdrawal as required by the Act for DPIs.

The Act required the Council to adopt "arrangements" for dealing with complaints of breaches of the code. The arrangements had to include provision for the appointment of at least one Independent Person.

The Head of Legal & Property Services went on to explain that non declaration of DPIs would become a criminal offence; approval of a prosecution would, however, have to be made by the Attorney General. She also advised that the future composition of the Standards Committee would be governed by proportionality unless Council voted otherwise with no member voting against. The current co-opted members would also cease to hold office and would appear from the drafting of the Act to be ineligible to be appointed as the Independent Person.

The Act did not give the Council or its Standards Committee any powers to impose sanctions so where a failure to comply with the code was found, the range of actions which could be taken was limited and had to be directed at securing the continuing ability of the authority to continue to discharge its functions effectively, rather than "punishing" the member concerned. The report contained a number of possible suggestions.

There was no requirement to put in place any appeals mechanism. The Monitoring Officer would be the initial filter but would be required to consult the Independent Person on her decision. The Independent Person did not, however, have any powers.

In response to a Member's question on the definition of a pecuniary interest, the Head of Legal & Property said she would not know until the regulations were published. All councillors would be required to register DPIs. In response to a further question regarding Development Control Committee she explained that currently a Member with a personal & prejudicial interest could speak at committee as the public had the right to speak. This would not be the case under the new arrangements.

Another Member asked about proportionality. He considered that there could be a danger of bias. An independent member added his agreement and felt this could be a particular issue in the run up to the elections.

The Head of Legal & Property Services referred to the possibility of full Council unanimously voting for a non-proportionate committee. She said that this committee could make a recommendation to the Constitution Working Party which in turn could recommend to Council.

One Member also considered that a right to representation should be included, a view with which other Members concurred. The Head of Legal & Property said that she could prepare and submit such arrangements for approval but that the Council would not be allowed to meet the cost of any representation.

A Member asked about the rigidity of the restrictions around the appointment of an Independent Member. He considered that it should include a restriction on anyone who had stood for election in the last 5 years.

Another Member asked about the inclusion of a member of the Executive. The Head of Legal & Property Services said the reason was to provide an element of seniority but it was up to councillors to decide. She said she was concerned about arrangements for dealing with complaints about Leaders or the Mayor as previously these would have been referred to the Standards Board.

A Member commented on the loss of expertise acquired by the current committee. He asked about recruitment and training of new people. The Head of Legal & Property responded that there would be a thorough selection process; the current Standards Committee would interview and recommend to Council. The Member asked that advertisements be widely disseminated in order to attract a range of candidates.

In response to a further question from the Member about the new criminal offence the Head of Legal & Property said this only applied to non-declaration. She referred again to the list of proposed sanctions in the report for other breaches. Another Member asked if fining was an option but the Head of Legal & Property confirmed that it was not.

The Head of Legal & Property stressed that the aim was to try to resolve issues informally; the process should be cheaper in the long run and produce better results.

She advised that consultation was taking place across Hertfordshire to try to establish a uniform Code. Counsel's opinion was also being sought on the issue of current independent members not taking part.

RESOLVED

- 1 that the Council establish a Standards Committee comprising 5 elected Members including one from each Group and that Council be requested to agree that the committee be not proportional (subject to initial agreement by the majority Group).
- 2 (a) that the Monitoring Officer be instructed to prepare and present to the Constitution Working Party for recommendation to Council for adoption a draft Code of Conduct. The draft will be circulated to members of the Standards Committee. That draft Code should –
 - i. equate to Paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its Committees and Sub-Committees; and
 - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.
- 2(b). that, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chair of Standards Committee, add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than DPIs.
- 2(c) that the Head of Legal & Property circulates DPIs and “arrangements” to the Standards Committee and includes a provision for appeals and the right to representation.
- 2(d) that the Head of Legal & Property be requested to include “not having stood for election in the past 5 years” to the criteria for becoming an Independent Person.
3. That the Head of Legal and Property be instructed to prepare and submit to the Constitution Working Party for recommendation to Council for approval “arrangements” as follows -
 - a. That the Head of Legal and Property be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
 - b. That the Head of Legal and Property be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. She/he be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she/he be given discretion to refer decisions on investigation to the Standards Committee where she/he feels that it is

inappropriate for her/him to take the decision and to report quarterly to Standards Committee on the discharge of this function;

- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Head of Legal and Property be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned and to the Independent Person and report the findings to the Standards Committee for information;
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Head of Legal and Property in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, she/he is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- e. That Council delegate to Hearings Panels such of its powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
 - Reporting its findings to Council for information;
 - Recommending to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - Recommending to the Mayor that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - Instructing the Head of Legal and Property to arrange training for the member;
 - Removing from all outside appointments to which he/she has been appointed or nominated by the Council and recommending to the Mayor removal from all outside appointments to which he/she has been appointed by the Mayor;
 - Withdrawing facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
 - Excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary

for attending Council, Committee and Sub-Committee meetings.

- 4(a) that the Head of Legal and Property, in consultation with the Chair of Standards Committee and with the advice of the Head of HR, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Committee
- 4(b) that the Head of Legal and Property advertise a vacancy of the appointment of 1 Independent Person and 2 Reserve Independent Persons
- 4(c) that a Committee comprising the four councillor members of Standards Committee be set up to short-list and interview candidates and to make a recommendation to Council for appointment.
- 5(a) that the Head of Legal and Property prepare and maintain a new register of Members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted and ensure that it is available for inspection as required by the Act;
- 5(b) that the Head of Legal and Property ensures that all members are informed of their duty to register interests;
- 6. that the Head of Legal and Property be instructed to recommend to Council a Procedure Rule 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 DPI, except where he/she is permitted to remain as a result of the grant of a dispensation
- 7. That Council delegates the power to grant dispensations –
 - a. on Grounds set out in Paragraphs 11.3.1 and 11.3.4 of this report to the Head of Legal and Property with an appeal to Standards Committee, and
 - b. on Grounds 11.3.2, 11.3.3 and 11.3.5 to the Standards Committee, after consultation with the Independent Person.

Chair
Standards Committee

The Meeting started at 5.00 pm
and finished at 5.45 pm