



Standards Committee
17 February 2012

Localism Act – Implications for Standards

Purpose of the report: To contribute to the Council's planning for changes to the Standards regime and to agree what further actions the Committee wishes to take to play a further role that planning

Background:

1. *The Localism Act 2011* abolishes the “Standards Board regime” and replaces it with a more locally focused process for regulating Member Conduct. This is expected to come into effect as from 1 July 2012. There are likely to be transitional arrangements introduced by regulations that will for example, establish a period for determining any cases under investigation under the current regime and confirmation of the penalties available should a breach of any new code be proven.
2. The most significant changes are in summary-
 - The national Code of Conduct is abolished. However, local authorities must adopt their own Codes and these must be consistent with the principles set out in section 28 of the Act.
 - The Council must establish new arrangements under which allegations of Member misconduct can be investigated and it will have to appoint at least one “Independent Person” whose views must be sought before a decision on an allegation is made.
 - There is no requirement to have a Standards Committee, or for it to include Independent Members. If the Council does not have a Standards Committee it will need alternative mechanisms for meeting the statutory requirement to promote and maintain high standards of conduct by its Members and Co-opted Members and for dealing with allegations of member misconduct.
 - The Monitoring Officer must establish and maintain a register of the interests of Members and Co-opted Members and ensure that this is available for inspection and published on the Council website.
 - Members must declare disclosable pecuniary interests (“DPIs”) on election to office. It will become a criminal offence for Members to

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deliberately withhold or misrepresent such interests. However, the definition of DPis will be specified in Regulations, which have not yet been introduced.

- It is open to the Council to decide what other interests ought to be disclosed. Failure to register these interests will be a breach of the Code of Conduct, but not a criminal offence.
 - There will also be new rules regarding the duty to disclose interests at meetings and when members must withdraw from meetings.
 - The procedure for dealing with the grant of dispensations has significantly changed.
3. An assessment of the issues arising and responsibility for actions is set out in Annex 1. A number of the actions naturally fall within the terms of reference of the current Standards Committee since these include “promoting and maintaining high standards of conduct” by Members and Co-opted Members and “advising the Council on the adoption or revision of the Members Code of Conduct.” However there needs to be a wider discussion with Council Members, who will ultimately determine the new arrangements at a meeting of Full Council.

4. The Code of Conduct

4.1. 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 –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

4.2. The 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).

4.3. 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. It is not possible yet to draft those provisions of a new code which reflect the as yet unseen definition of DPis, but it is possible to give an indicative view of what the Council might consider appropriate to include in the Code in respect of the totality of all interests, including DPis, other pecuniary interests and non-pecuniary interests. The Act 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.

4.4. The Council's new Code of Conduct will have to deal with the following matters –

- General conduct rules, to give effect to the seven principles.
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

4.5. The Monitoring Officer has been working with colleagues in the Boroughs and Districts to share expertise and there is a general view that with the joint working between Members of different Councils, particularly on Local Committees and with more opportunities arising soon, for example the new Police and Crime Panels, it would be helpful to agree as far as possible common provisions for a new local Surrey code to assist members in promoting and maintaining high standards of conduct in the Surrey context. A preliminary draft of such a Code has been prepared and is attached at Annex 2. The Committee is invited to comment on it and to consider how further it wishes to advise the Council on the adoption of a new Local Code of Conduct.

5. The Standards Committee

5.1. The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will be no statutory requirement for a Standards Committee, probably after 1 July 2012. However, there will still be a need to deal with standards issues and case-work, so it is likely to remain convenient to have a committee dealing with standards issues. Any such Committee will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

- The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive/Cabinet on the Standards Committee will cease to apply. The Committee can include Co-Opted Independent Members, but these will not have voting rights.
- The current Independent Members will cease to hold office. The Act establishes a new category of Independent Persons who must be consulted at various stages, but provides that the existing Independent Members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meeting of any Standards Committee, but are unlikely to be co-opted onto the Committee;

The Council must decide whether to set up a Standards Committee, and how it is to be composed. The Standards Committee may wish to express a view or make a recommendation about this.

6. Dealing with Misconduct Complaints

6.1. “Arrangements”

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- The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of the Code of Conduct by Members and such complaints can only be dealt with in accordance with such “arrangements”. Therefore, 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 Act repeals the requirements for separate referrals, review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers either to any Standards Committee and to the Monitoring Officer or to some other person or committee.

6.2. Decision whether to investigate a complaint

The Council will need to consider how it wishes to replace the current arrangement for initial assessment of complaints, to provide a basis for filtering out trivial and tit-for-tat complaints. These arrangements should also offer the opportunity to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.

6.3. “Breach of Code” finding on investigation

- Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there needs to be a mechanism to allow the Member against whom the complaint has been made to respond to the investigation report, and to determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.
- The Act does not give the Council any powers to impose sanctions, such as suspension or requirements for training or an apology. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to discharge its functions effectively, rather than “punishing” the member concerned.
- There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

The committee has significant experience of dealing with all stages of complaints about Member conduct and may wish to offer advice and recommendations to the Council about what arrangements are most likely to be efficient and effective

7. The Independent Person

The Council must appoint at least one Independent Person whose views must be sought before a decision on an allegation is made. A Member accused of a breach of the Code may also contact the Independent Person for advice. The following cannot be Independent Members-

- Members, co-opted members or officers of the Council
- Relatives or close friends of the above
- Persons who were Members, co-opted members or officers of the Council in the last five years

The Act provides that an Independent Person does not lose their “independence” if they are paid an allowance or expenses by the Council for carrying out the role. The conflicting roles make it appropriate to have more than one Independent Person, so that where an Independent Person has advised a member, another would be approached by the Council so as not to create a conflict of interest. It would also allow for cover where an Independent Person was unavailable to comment for any other reason. The Monitoring Officer has been exploring with her colleagues in the Boroughs and Districts the possibility of jointly appointing a pool of Independent Persons across all twelve authorities.

8. Equalities Implications

An Equality Impact Assessment will be undertaken as part of this policy review and any issues arising will be addressed in the formulation of the new regime.

Financial and value for money implications

9. No immediate financial implications

Risk Management Implications

10. There is no penalty in the Act for failure to comply. However, the Council could be challenged by way of complaints to the Local Government Ombudsman or by way of Judicial Review. In addition there is a serious risk to both the reputation of the Council and the Councillors themselves for failing to appropriately fulfil its statutory duty to promote and maintain high standards of conduct for its councillors and co-opted members.

Implications for the Council's Priorities or Community Strategy/Local Area Agreement Targets

11. Identify how the recommendations will contribute towards achieving the Council's Priorities or support delivery of the Local Area Agreement or Community Strategy (or state "none if appropriate)

Recommendations:

1. The Committee is invited to comment on:
 - The preliminary draft local code of conduct attached at Annex 2
 - How best to ensure that there is a democratic oversight of standards issues with sufficient degree of independence to give public confidence in the new arrangements.
 - How best to introduce efficient and effective arrangements for dealing with complaints about members' conduct.

2. The Committee is asked to consider how further it should advise the Council on the contents of a new Local Code of Conduct.

Next steps:

Identify future actions and dates.

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Sources/background papers:

Annex 1

**LOCALISM ACT 2011 – STANDARDS REGIME
ASSESSMENT AGAINST THE CURRENT CODE OF CONDUCT AND SUGGESTED ACTION PLAN**

	Issue	Comment	Mandatory or Discretion	Code	Const'n S.O.
1	<p>Content of the Member Code of Conduct</p> <p>i) Context and Introduction for the Code of Conduct including the 7 principles-</p> <ul style="list-style-type: none"> • Selflessness • Integrity • Objectivity • Accountability • Openness • Honesty • Leadership 	<p>- The following principles are no longer applied but much of the intent can be implied under the 7 retained-</p> <ul style="list-style-type: none"> • Personal Judgement • Respect for Others • Duty to Uphold the Law • Stewardship <p>- Can include option to adopt these or include expanded definitions of the 7?</p>	<p>M re 7 principles but D re extent</p>	X	
	<p>ii) Registerable Interests</p> <ul style="list-style-type: none"> • Disclosable Pecuniary Interests (DPI's) • Other pecuniary Interests • Non pecuniary interests 	<p>- Regulations awaited to provide the definition of DPI's. Failure to declare DPI's a criminal offence.</p> <p>- Protocol with Police as to investigations and referrals</p> <p>- Members views to be sought on the extent and type of other interests to be registered- breach of Code only.</p> <p>- See also Paras 5 & 6 below as to</p>	<p>M</p> <p>D</p>	X	X

	<ul style="list-style-type: none"> ○ Registration ○ Informing the MO ○ Updating Register entries ○ Withdrawal from/ not speaking or voting at meetings ○ Dispensations ○ Sensitive Interests 	<p>Constitutional changes needed</p> <ul style="list-style-type: none"> - Act contains specific requirements - Act only requires registration and disclosure of interests at meetings that are not on the register. Ought Members to be required to inform the MO prior to meetings of any interests they have or at the meeting itself? - Need only update on election or appointment. However in practice it may be sensible to include a requirement to keep these up to date on a continuing basis - Applies to DPI's only. - Seek member views on whether to apply to other interests? - MO or Member approval required? 	<p>M</p> <p>M</p> <p>D</p> <p>M and D re extent</p> <p>M</p> <p>D</p> <p>M</p> <p>D</p> <p>D</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p></p> <p>X</p> <p>X</p> <p></p> <p>X</p> <p>X</p> <p></p> <p>X</p>
2	Arrangements for dealing with Complaints				

	<ul style="list-style-type: none"> • Stages of the process • Procedure to be adopted 	- To be drafted separately	M but D as to content	X	
3	Appointment of Independent Representative <ul style="list-style-type: none"> • Role profile • Expenses and Allowances • Advertisement 	<ul style="list-style-type: none"> - No requirement, but sensible to ensure the right people are appointed - Add to the ToRs of the IRP and this will need to be addressed by the panel asap - To be drafted 	M but D re contents of the various elements		
4	Future Standards Committee? <ul style="list-style-type: none"> • Terms of reference • Procedures • Co-opted Independent members 	<ul style="list-style-type: none"> - Some democratic oversight recommended - To be agreed - To be drafted- - recommended to provide emphasis to the “duty to promote and maintain”. 	M but D as to format and content		X X X
5.	Amendments required to Other Codes and protocols <ul style="list-style-type: none"> • Member and Officer Protocol <ul style="list-style-type: none"> ○ para 2 – ref to the statutory code ○ para 8 – ref to breaches referred to 	It would make sense to cross reference these documents or, even better, add the others as Annexes to the main Member Code for transparency and	D	X	X

	<p>the Standards cttee</p> <ul style="list-style-type: none"> • Planning Code of Conduct – para 4 	clarity			
6.	<p>Constitutional Changes required</p> <ul style="list-style-type: none"> • Article 9 – Standards Cttee • Article 10 – Local Cttees • Police and Crime Panels • Responsibility for Functions <ul style="list-style-type: none"> ○ Standards Cttee pp. 6.18 • Part 2 of Standing Orders constitution of Standards Committee 	<p>- SCC Code will apply to co-opted borough/district members on local committees, not to Police and Crime Panel as a joint committee, where individual codes apply. If there are different Codes for different councils could lead to confusion. Not an issue if it's a County-wide Code</p> <p>- Decision required as to where promoting of standards, determining allegations and determining politically restricted posts will sit</p> <p>- Requires rewriting</p>	<p>M</p> <p>M/D</p> <p>M</p> <p>M/D</p>		<p>X</p> <p>X</p> <p>X</p> <p>X</p>

Draft CODE OF CONDUCT

Introduction

1. This Code applies to you as a member of Surrey County Council when you act in your role as a Member. “Member” includes a co-opted member (voting and non-voting) and an appointed member
2. Compliance with the Code will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by its Members and Co-opted Members in accordance with the principles of:
 - Selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty;
 - leadership.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

3. Personal Conduct

As a Member of Surrey County Council you should provide leadership in promoting and maintaining high standards of personal conduct to sustain the good reputation of the Council.

- 3.1 You should treat the people you come into contact with as a Councillor with respect, fairness and dignity.
- 3.2 You must perform your role and duties as a Councillor with honesty, integrity and impartiality, and be accountable for your own actions.

4. Use of resources

As a Member of Surrey County Council you are accountable for your use of the Council’s resources.

- 4.1 You should not make personal use of the Council's property, facilities or resources or allow other people to make use of equipment provided for your use as a Member
- 4.2 You must not use Council resources improperly for political purposes or for any party political purposes, neither must you ask Council staff (other than properly appointed political assistants who may assist a political group in Council business) to assist you for such purposes.

5. Gifts and Hospitality

As a Member of Surrey County Council you must avoid accepting any gift, hospitality or other favour which could give the impression of compromising your honesty or objectivity. You should avoid any behaviour which might reasonably be seen as motivated by personal gain.

- 5.1 You should exercise caution in accepting any gifts or hospitality which are (or which you might reasonably believe to be) offered to you because you are a councillor
- 5.2 You should never accept significant gifts or hospitality from suppliers or contractors seeking to acquire or develop business with the Council.
- 5.3 EITHER [You should keep personal records and of any gift or hospitality you accept and must openly provide the detail of any such gift or hospitality you have accepted if you are required to provide such information (either by law or in compliance with Council policy)]
OR [You must register any gift you receive or hospitality you accept in the register maintained by the Council. This register will be open to public inspection and may be placed on the Council's website]

6 Information and Confidentiality

Surrey County Council is committed to the concept of open government and wherever possible will be transparent in taking decisions and commissioning goods and services. As a Member you should play a role in this by being open and honest in your Council business. However you will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the interests of the Council or another person or organisation. Therefore:

- 6.1 You must not prevent another person from having information to which they are entitled by law
- 6.2 You should disclose information, including confidential information where you are required by law to do so and may take the advice of the Monitoring Officer regarding any such legal requirement.
- 6.3 You may, acting in good faith, disclose information where the disclosure is reasonable and it is in the public interest to do so. You

should consult the Monitoring Officer or take other independent legal advice before doing so

- 6.4 As a general rule you should not disclose information which has been given to you in confidence, or which you ought reasonably to be aware is confidential information. You may of course disclose such information if you have the consent of a person authorised to give it. You may also disclose the information for the purposes of obtaining advice, provide that you disclose it only to an advisor, who has agreed to keep the information confidential
- 6.5 You must not use information you have obtained as a Surrey County Councillor for personal gain, neither should you pass it on to others who may use it in that way

7 Pecuniary Interests

As a Member of Surrey County Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromised your honesty or objectivity. Equally you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and to promote openness and accountability, the Monitoring Officer must, by law, establish and maintain a register of pecuniary interests, open for inspection at the Council's offices and publicly accessible on its website

[Definition of Disclosable Pecuniary Interest to be included here]

- 7.1 You must, within 28 days of taking office notify the Monitoring Officer of any disclosable pecuniary interests which will then be entered on the register of pecuniary interests.
- 7.2 If you are present at any meeting of the Council, a Committee Sub Committee or Joint Committee of the Council including a local committee and you have a disclosable pecuniary interest in any matter that will be or is being considered at that meeting, you must not participate in any discussion regarding that matter and you must not participate in any vote on that matter. Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date of the meeting at which it became apparent
- 7.3 If you have a disclosable pecuniary interest in any matter you may not take any decision on that matter as Leader or a Cabinet Member. Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date on which it became apparent
- 7.4 If you have a disclosable pecuniary interest in any matter you may not take any decision on that matter under any individual member decision making powers delegated to you by the Leader or the Council Where

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you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date on which it became apparent