

# North Tyneside Council

## Report to Council

### Date: 26 January 2012

## ITEM 9

Title: The Localism Act  
2011- The Amended  
Standards Regime

Portfolio(s): Elected Mayor

Cabinet Member(s): Mrs Linda Arkley

Report from Directorate: Chief Executive's Office

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Wards affected: All

### PART 1

#### 1.1 Purpose:

The purpose of the report is to advise and inform Members about the changes to the Standards regime arising from the Localism Act 2011 and to seek appropriate delegations to ensure the Council is able to comply with its statutory obligations when the Act comes into force which is expected to be on 1 July 2012 but may be earlier.

#### 1.2 Recommendation(s):

It is recommended that Council:

- 1) Request the Monitoring Officer in consultation with a Working Group comprising the Chief Executive, the Elected Mayor, and the Leader and Deputy Leader of each Political Group and the Standards Committee ('The Working Group') to produce for consideration and adoption by Council:
  - a. A draft Code of Conduct to reflect the requirements of the Localism Act 2011 and regulations enacted in respect of Disclosable Pecuniary Interests;
  - b. Draft arrangements for handling of Misconduct Complaints; and
  - c. A draft Standing Order requiring a Member to withdraw from the meeting room during the consideration of any item of business in which the Member has a Disclosable Pecuniary Interest.
- 2) Authorise the Monitoring Officer to take all appropriate steps including advertising in local publications and on the Council website, to secure applicants for the role of Independent Person.
- 3) Request the Monitoring Officer in consultation with the Working Group and Standards Committee, to:
  - a. produce a Job Outline and Person Specification for the role of the Independent Person;

- b. shortlist and interview candidates and recommend to Council for appointment suitable candidates for the role of Independent Person and 2 Reserve Independent Persons; and
- c. set the allowance to be paid for the Independent Person and Reserve Independent Persons.

### **1.3 Forward Plan:**

This report does not appear on the Forward Plan for the period 1 January 2012 to 30 April 2012. It is required to be considered at this meeting to enable steps to be taken as outlined in the report to enable the Council to meet its statutory obligations once the relevant provisions of the Localism Act come into force.

### **1.4 Council Plan and Policy Framework**

This report has no direct relevance to the 2011-2015 Council Strategic Plan priorities.

### **1.5 Information:**

#### **1.5.1 Background**

Set out below is information regarding the changes to the Standards regime being introduced by the Localism Act 2011 ("the Act"). It is recommended that Council agree to the creation of a working group comprising the Mayor, Group Leaders and their deputies, the Chief Executive and the Monitoring Officer to consider available options to fulfil the new obligations on the Council relating to Standards arising under the Act, including making recommendations to Council at the Annual Council meeting and undertaking the following work:

- The production of a draft Code of Conduct for presentation to Council for adoption
- The consideration of the model to be adopted by the Council for the consideration of standards issues and case work arising from complaints to the Council where alleged breaches of the Code of Conduct have occurred. This work would include consideration of whether a successor Committee to the Council's Standards Committee is required or whether this responsibility could be subsumed within an existing Committee's terms of reference (an option for a successor body is described below) or whether delegation to an officer possibly the Chief Executive in consultation with others would be appropriate
- Consideration of a Standing Order to address the requirement that Members withdraw from any meeting where a Disclosable Pecuniary Interest has been declared.

#### **1.5.2 The Localism Act 2011**

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. The date for implementation of these changes was proposed to be 1<sup>st</sup> April 2012, but information received from the Department of Communities and Local Government recently indicated that the arrangements will be required to be in place by 1 July 2012. The effect is that all matters will need to be addressed at the Annual Council meeting in May 2012.

This report describes the changes and recommends the preliminary actions necessary for the Council to progress with implementation of the new regime.

**(a) Duty to promote and maintain high standards of conduct**

Under the Act the authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

**(b) Standards Committee**

The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will therefore be no requirement in future for a Standards Committee. However, there will still be a need to deal with standards issues and casework, so that it is likely to remain convenient to have a committee which has similar responsibilities to the Council's current Standards Committee. Such a committee would in future 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 on the Standards Committee will cease to apply;
- The current co-opted independent members will cease to hold office. The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for a period of 5 years after ceasing to hold office. The new Independent Persons may be invited to attend meetings of the Standards Committee.

However, there is also the potential for an enhanced role for a senior council officer such as the Chief Executive or Monitoring Officer, following appropriate investigation, in consultation with others to determine whether a breach of the Code has taken place. The options available to secure compliance with the requirements of The Localism Act are proposed to be enhanced with the Working Group and Standards Committee.

**(c) The Code of Conduct**

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 members' 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.

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), 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 possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider would be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it is appropriate for work to commence in developing a draft Code of Conduct which requires registration and disclosure for those interests which today amount to personal and/or prejudicial interests, but would only require withdrawal as required by the Act for DPIs.

The Act prohibits members with a DPI from participating in authority business, and it is therefore appropriate for the Council to consider the adoption of a Standing Order requiring members to withdraw from the meeting room should they have a DPI.

As a result 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. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct; and
- 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 defining DPIs are published, it is not possible to be certain what additional disclosure would be appropriate.

#### **(d) Dealing with Misconduct Complaints**

##### “Arrangements”

The Act requires that the Council adopt “arrangements” for dealing with complaints of alleged breach of the Code of Conduct by Members, 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 advantage is that the Act repeals the requirements for separate Assessment, Review and Determination (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 to an appropriate Committee and to the Monitoring Officer.

Issues that will need to be addressed in the arrangements will include:

- The process for determining whether to investigate a complaint
- The process for dealing with a conclusion of “No Breach of Code” following investigation
- The process for dealing with a conclusion of a “Breach of the Code” following investigation

- The action to be taken following a hearing finding that there is a Breach of the Code
- The role of the Independent Person(s) in the above matters.

In relation to action to be taken if a breach of the Code is found as a result of a hearing, the Act does not give the Council any powers to impose sanctions such as suspension or requirements for training or an apology on members. 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 continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following –

- Reporting its findings to Council for information;
- Passing a motion of censure at a Council meeting;
- Recommending to the member’s Group Leader (or in the case of members not belonging to a group, 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 Elected Mayor that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to arrange training for the member;
- Removing the member from all outside bodies to which he/she has been appointed or nominated by the authority;
- 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.

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.

**(e) Independent Person(s)**

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

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 Council (not just of those present and voting).

A person is considered not to be “independent” if –

- They are or have been an elected or co-opted member or an officer of the Council within the past 5 years;
- They are or have been an elected or co-opted member of any Committee or Sub-Committee of the Council within the past 5 years (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or
- they are a relative or close friend of a current elected or co-opted member or officer of the Council, or of any elected or co-opted member of any Committee or Sub-Committee of the Council.

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 Council against whom a complaint has been made.

To avoid the potential for conflicts of interest to arise for the Independent Person, for example an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, could not reasonably be involved in the determination of that complaint. This may be overcome by the appointment of more than one Independent Person or reserve candidates who may be appointed as Independent Persons in appropriate circumstances.

As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members’ allowances, and can therefore be determined without reference to the Independent Remuneration Panel. The amount of any allowance would need to reflect the extent of the role played by the Independent Person, a role which is likely to be less onerous than that of the Chair of the current Standards Committee.

#### **(f) The Register of Members’ Interests**

The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations yet to be published 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.

At present we do not know 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.

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.

Each elected or co-opted member must register all DPs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member. In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.

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.

#### **(g) Disclosure of Interests and Withdrawal from Meetings**

As set out above, DPs are broadly equivalent to prejudicial interests with a requirement to disclose and withdraw from all Council meetings and not vote on the matter. However it is also possible to secure dispensations from the authority thus allowing a Member to speak and/or vote.

A dispensation may be granted in the following circumstances as a result of the Act –

- That so many members of the decision-making body have DPs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- 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 Cabinet would be able to participate on this matter; or
- That the authority considers that it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years. In addition, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer.

## (h) **Sensitive Interests**

The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

So, where a member is concerned that disclosure of the detail of an interest (either a DPI 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.

## (i) **Transitional Arrangements**

Regulations to be made under the Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

## **1.6 Decision options:**

The following decision options are available for consideration by the Council:

### Option 1

The Council may accept the recommendations set out at 1.2 above.

### Option 2

The Council may defer a decision to accept the recommendations set out at 1.2 above however this would result in a material risk that the Council would not have appropriate arrangements in place to deal with the changes introduced to the obligations on the Council in respect of the requirements to adopt a Code of Conduct, to appoint one or more Independent Persons, to deal with complaints of breaches of that Code and for the dealing with Disclosable Pecuniary Interests.

Option 1 is the recommended option.



## **1.7 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

The provisions of the Localism Act 2011 relating to the revised arrangements for Member conduct are expected to come into force on 1 July 2012. The acceptance by Council of this option will enable appropriate consultation to be carried out with the proposed Working Group and Standards Committee and to bring to the Annual Council meeting proposals for approval by Council that secure the obligations placed on the Council in respect of the Localism Act 2011 and ensure regulations relating to Disclosable Pecuniary Interests are complied with. For example, the production of a Code of Conduct for Members, the selection of an Independent Person, the production of procedures to deal with complaints alleging misconduct, dispensations and the registration and disclosure of interests and in particular Disclosable Pecuniary Interests. Failure to take this step is likely to result in the Council not being in a position of readiness when the legislation comes into force.

## **1.8 Appendices:**

None.

## **1.9 Contact officers:**

Vivienne Geary: Head of Legal, Governance and Commercial Services and Monitoring Officer (Tel: 0191 643 5339)

Stephen Ballantyne: Manager Legal Services – Monitoring Officer Support and Employment (Tel: 0191 643 5329)

Alison Campbell: Finance Business Manager (Tel: 0191 643 7038)

## **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) The Localism Act 2011

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

The allowances paid will be determined by the Council but the recruitment advertising and remuneration of the Independent Person and two reserve Independent Persons is expected to be contained within the budget which currently covers the allowances paid to the Independent Chair and five independent members of the Standards Committee.

### **2.2 Legal**

The legal implications are set out in the body of the report.

## **2.3 Consultation/community engagement**

### 2.3.1 Internal Consultation

Internal Consultation has taken place with the Elected Mayor and Group Leaders and their Deputies. The Report has also been submitted to Standards Committee for their consideration.

### 2.3.2 External Consultation/Engagement

Not applicable.

## **2.4 Human rights**

There are no human rights implications directly arising from these proposals.

## **2.5 Equalities and diversity**

There are no equality and diversity implications directly arising from these proposals.

## **2.6 Risk management**

The risks associated with any delay in progressing the necessary steps are set out in paragraphs 1.6 and 1.7 of this report.

## **2.7 Crime and disorder**

There are no crime and disorder implications directly arising from these proposals.

## **2.8 Environment and sustainability**

There are no environment and sustainability implications directly arising from these proposals.

## **PART 3 - SIGN OFF**

- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Director with Responsibility for Community Engagement