

Report of the City Solicitor to the meeting of Standards Committee to be held on 23 March 2011.

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Subject:

Implications of the Localism Bill for the Standards Framework in Bradford

Summary statement:

Members are invited to consider the proposals set out in the Localism Bill with regard to the Standards Regime.

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1. Summary

- 1.1 Members are invited to consider the proposals set out in the Localism Bill with regard to the Standards Regime.

2. Background

- 2.1 The Government set out its intention to abolish the “Standards Board Regime” in the Coalition Agreement published in May 2010. The Localism Bill sets out the Government’s intention to abolish the Standards Regime and had its first reading in Parliament on the 13th December 2010 and its second reading on the 17th January 2011. The Bill has been committed to a Public Bill Committee. The Committee considered the Bill on the 17th February 2011 and is to sit again on the 1st March and 3rd March 2011.
- 2.2 The Localism Bill sets out proposals to abolish the current Standards Regime which was established by the Local Government Act 2000. In particular it proposes the following:
- The Members’ Code of Conduct and the general principles of public life will be revoked.
 - The requirement for councils to have a Standards Committee will be abolished.
 - Standards for England will be abolished as will all its functions.
 - The first tier tribunal (Local Government Standards for England) (formerly known as the Adjudication Panel for England) will lose its jurisdiction over the conduct of councillors.
- 2.3 The Localism Bill introduces a new duty on councils to promote and maintain high standards of conduct by members and co-opted members. However, there are no details in the draft Bill regarding how this duty is to be fulfilled or what it actually entails.
- 2.4 The Localism Bill does allow local authorities to adopt a Code of Conduct to apply to councillors and co-opted members whilst they are acting in that capacity.
- 2.5 Specifically the Council can choose to:
- Revise the existing Code of Conduct.
 - Adopt a Code of Conduct to replace the existing Code of Conduct.
 - Withdraw its existing Code of Conduct without replacing it.
- 2.6 If the Council does choose to continue to have a Code of Conduct in place then it must receive and consider complaints about conduct. In addition it will need to consider whether to investigate allegations and, if as a result of an investigation or

otherwise it finds that a member or co-opted member has failed to comply with the code, it must decide whether to take action and what action to take.

- 2.7 The Localism Bill states that the functions of considering, investigating and taking action relating to complaints regarding the conduct of members or co-opted members are not to be Executive functions and therefore must be carried out by Full Council, a Council Committee or an officer acting under delegated powers.
- 2.8 Members should also be aware that the Local Government Act 1972, Section 101 allows two or more councils to set up a joint committee to carry out their functions. It is, therefore, possible to create a joint Standards Committee for two or more of the West Yorkshire Authorities. This would require the Councils to reach agreement over the content of a voluntary Code of Conduct, the Terms of Reference and the composition of the Standards Committee.
- 2.9 The Localism Bill also proposes to make regulations which will require the monitoring officer to establish and maintain a register of members' interests. These regulations will make clear when members have to declare their interests in meetings and when their interests will prevent them from taking part in a decision. It will also make provisions for the Council to grant dispensation to members in some circumstances. The exact nature of this requirement will not be clear until the regulations are published.
- 2.10 The Localism Bill will also make it an offence to fail to comply with the obligations in the regulations. At present it proposes a penalty that the Magistrates Court may impose upon conviction of a fine up to £5,000 and an order disqualifying the member from being a member of a relevant authority for up to five years.
- 2.11 It is anticipated that the Localism Bill in its final form will receive Royal Assent in November or December 2011. However, the Council will need to consider the implications of the Bill in advance of it receiving Royal Assent to allow sufficient time for appropriate amendments to be made to the operation of the governance framework to accommodate these changes.
- 2.12 Transitional arrangements have already been proposed to be put in place between the Bill receiving Royal Assent and the "appointed day" when the Act comes into force. Any local arrangement would therefore start after the "appointed day".
- 2.13 On the 23rd December 2010 Standards Committee met informally to discuss the initial proposals to be contained in the Localism Bill. In particular the Committee identified a number of issues against which proposals should be assessed:
- Public accountability. Standards Committee were mindful that the electoral process could not always resolve issues involving member behaviour as alleged indiscretions would not always be publicised. It was important that the public were able to see that complaints were appropriately addressed.
 - Improved ability to weed out trivial and vexatious complaints. Standards Committee felt that it was important to establish the middle ground where complaints were neither frivolous or vexatious nor sufficiently serious to warrant criminal action but were of sufficient concern to require proper consideration.

- Ability to address bullying.
- Clarity about the involvement of political groups and whips. In particular Standards Committee noted that the Code of Conduct provided a guide and a benchmark to all councillors and reassures the public. It assisted groups and whips in dealing with internal discipline.
- Clarity about expectations of behaviour and about consequences. Again Standards Committee noted that it was important for new and inexperienced councillors to understand the requirements.
- The use of clear English. Standards Committee were concerned to ensure that any new arrangements moving forward should be drafted in terms that all members of the community would understand.
- Provision of an appropriate way of assessing members. Standards Committee noted that there was some difficulty in undertaking an initial assessment without a response from the member that was the subject of the complaint.
- Sufficiency and clarity about sanctions. Standards Committee noted that the proposals around sanction were very limited.
- Opportunity for exoneration. Standards Committee expressed concern that the circumstances available to a member who was the subject of a complaint to achieve exoneration were limited to a full investigation and it ought to be possible to provide circumstances where that could be achieved more expeditiously.

2.14 Attached to this report at Appendix 1 is an assessment by the Local Government Improvement and Development team of the Local Government Group in partnership with the Association of Councils' Secretaries and Solicitors which provides a briefing on the following issues post the implementation of the Localism Bill:

- The position of the Nolan Principles.
- Registering interests.
- Fiduciary duties of councillors.
- Criminal and civil law including discrimination and electoral offences.
- Local Government Ombudsman.
- Audit Commission powers.
- The common law position of bias, predisposition and predetermination.

This is a useful document that sets out the alternatives available to deal with member misconduct in the absence of a Standards Regime and should inform discussions with members.

- 2.15 In addition a number of specific issues need to be considered moving forward:
- 2.15.1 Should the Council adopt a voluntary Code of Conduct?
- 2.15.2 If yes, should the Council revise the existing Code or adopt a new Code drafted locally?
- 2.15.3 If a Code is to be retained/introduced should there be different processes for dealing with different types of complaints? Namely:
- A complaint by a member.
 - A complaint by an officer.
 - A complaint by a member of the public.
- 2.15.4 Should the Council have a separate Standards Committee to implement the Code of Conduct Regime or should the functions be transferred to another committee exercising Council functions?
- 2.15.5 What, if any functions can be delegated to an officer?
- 2.15.6 The Localism Bill proposes that the position of independent members as it currently stands are to be abolished. Should the Council retain co-opted independent members in a non voting capacity?
- 2.15.7 Is there any merit in having a regional Standards Committee?
- 2.15.8 The Localism Bill would remove the requirement for the Council to administer a Code of Conduct for Town and Parish Councils. Is there any merit in continuing to provide this service on a voluntary basis?
- 2.16 Standards Committee's views are sought on these questions.
- 2.17 Standards Committee will appreciate that the decision on the future of the Standards Regime locally rests with the Council corporately and specifically will be debated amongst the political groups. Once initial discussions have been undertaken a further detailed options paper will be drawn up for presentation to the Executive, to Corporate Governance and Audit Committee and to Full Council.

3. Legal Implications

- 3.1 The legal implications of the Localism Bill as they relate to the Standards Regime are set out in the report.
- 3.2 The final decision on whether to continue with a Standards Regime rests with full Council as will the necessary constitutional amendments. If it is determined to continue with a Standards Committee, a Code of Conduct and a Standards Regime

then such proposals must be compliant with the rules of natural justice and operate in a fair, open and transparent way.

4. Finance or Resource Implications

- 4.1 The decision whether or not to continue with a Standards Regime will have potential resource implications depending on the nature of the regime adopted. It ought to be possible to meet any additional resource requirements from existing resources.
- 4.2 The final decision on whether to continue with the Standards Regime may have an impact on the amount payable under the Members' Scheme of Allowances.

5. Other Implications

- 5.1 There are no Equal Rights, Sustainability, Community Safety, Human Rights Act or Trade Union Implications arising from this report.

6. Not for Publication documents

- 6.1 None.

7. Recommendations

- 7.1 That Standards Committee consider the implications of the Localism Bill on the Standards Regime as set out in this report.
- 7.2 Standards Committee consider and comment upon the questions listed in paragraph 2.15.

8. Reasons for Recommendation

- 8.1 To ensure that Members of the Standards Committee understand the implications of the Localism Bill as they relate to the Standards Regime and provide their comments as part of the consultation process to inform the discussion with the political groups.

Appendices

- 1. Maintaining High Ethical Standards in Local Government