

READING BOROUGH COUNCIL
REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	19 MARCH 2012	AGENDA ITEM:	2
TITLE:	STANDARDS - FUTURE LOCAL ARRANGEMENTS		
CHAIRMAN:	JOHN HICKS	PORTFOLIO:	
SERVICE:	LEGAL & DEMOCRATIC SERVICES	WARDS:	BOROUH-WIDE
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 The annual Standards Committee meeting, on 21 July 2011, considered the Government's provisions, in the (then) Localism Bill, to end the statutory standards regime. Further to the Committee's Minute (4), this report reviews options for the authority to make local arrangements to have a Member Code of Conduct and voluntary local Standards Committee from 2012, following the abolition of the statutory standards regime set out in Part III of the Local Government Act 2000.
- 1.2 The Localism Bill received Royal Assent on 15 November 2011. It has ended the statutory requirement for local authorities to have a Standards Committee, revoked the Model Code of Conduct, and abolished Standards for England and the current statutory facility for disqualification through the First-Tier Tribunal. Local authorities will be able to continue to appoint Standards Committees, and must have their own Members' code, but these will not have any statutory status, and there will be no statutory basis for sanctions in cases of breach (except in relation to an intentional failure to declare a declarable pecuniary interest). Therefore, the local Standards Committee of the future will be able to censure Members, but not suspend.
- 1.3 The standards provisions of the Localism Bill were the subject of some late amendments in the House of Lords, which the Government accepted. These included a requirement for local authorities to appoint an 'Independent Person' to be consulted by the authority. This person cannot be a present Member of the authority, including anybody who is a co-opted (independent) Member of the current Standards Committee.
- 1.4 The Standards Committee, on 21 July 2011, considered the position at that date and at Minute (4) made the following recommendations to full Council:

- (1) That a local standards committee be established to replace the statutory body on its abolition, comprising both elected councillors and independent members;
 - (2) That a local code of conduct for elected councillors be retained;
 - (3) That a local standards procedure be developed involving political Group disciplinary processes and subsequent referral to a standards committee where the complainant remained dissatisfied with the outcome, which could be in public where the Standards Committee felt this was appropriate.
- 1.5 Full Council received the Committee's minutes at its meeting on 18 October 2011, and discussed the Committee's recommendations. It resolved unanimously as follows:
- (1) That the recommendations made to Council by the Standards Committee on 21 July 2011 ... be agreed in principle;
 - (2) That the Chief Executive and Head of Legal and Democratic Services be authorised to work with the Standards Committee and Group Leaders to develop proposals for a local Standards Committee and local complaints process for Councillors, for adoption by the authority at its Annual Meeting in May 2012.
- 1.6 Reading Borough Council set up a Standards Panel in 1999, before the statutory regime was introduced, and adopted terms of reference and Standing Orders for the conduct of the Panel's business. These are set out in para. 5 below, and were used as the basis for Article 9 of the Council's constitution (the Standards Committee). It also adopted principles for dealing with complaints which were superseded by the statutory standards regime but are set out in para. 5.4 below as the basis for the operation of a future local voluntary Committee.
- 1.7 The following documents are attached to this report:
- Appendix A:** The Council's current Member Code of Conduct, based on the Model Code prescribed by Parliament in Statutory Instrument SI 2007/1159.
- Appendix B:** The terms of reference of the Council's current (statutory) Standards Committee (Article 9 of the Council's constitution)

2. RECOMMENDED ACTION

- 2.1 That the Annual Council Meeting, on 23 May 2012, adopt a local Member Code of Conduct for the Council and arrangements to promote and maintain high standards of conduct by Members, to come into effect from 1 July 2012;
- 2.2 That the local Member Code of Conduct be based on the current Model Code, modified to include revised reference to the updated Nolan Principles set out in the Localism Act 2011, and the registration and declaration of pecuniary and non-pecuniary interests;
- 2.3 That the arrangements include:

- a) A local Standards Committee, with terms of reference and Standing Orders based on those adopted for the predecessor Standards Panel in 1999, updated to reflect the requirements of the Localism Act 2011;
- b) A flexible, three-stage Member complaints process with a preliminary filter stage by the Monitoring Officer, as follows:
 - Preliminary Filter by Monitoring Officer
 - Stage 1: reference to Councillor's Group Leader to be dealt with under Group disciplinary process
 - Stage 2: investigation commissioned by Chief Executive / Monitoring Officer
 - Stage 3: investigation report to public Standards Committee
- c) Standing Orders and principles for dealing with complaints about Councillors for the local Standards Committee be based on those adopted for the predecessor Standards Panel, in 1999;

2.2 That the Monitoring Officer work with the Committee and Group Leaders to prepare a job description, person specification and advertisement for the position of Independent Person, and to agree the process and timetable for advertising and recruiting to this new position, before 1 July 2012.

3. POLICY CONTEXT

- 3.1 Standards and conduct were a key theme in the Blair Government's Modernisation agenda for Local government, and were specifically addressed in Part III of the Local Government Act 2000, which introduced a statutory standards regime for local government. At the heart of the statutory regime is the National Code of Conduct for Members, which all local authorities had to adopt from 2002, and which all Members have had to agree to observe as part of their declaration of acceptance of office.
- 3.2 The Local Government and Public Involvement in Health Act 2007 introduced local assessment of complaints, by the authority's own Standards Committee. The Council adopted a new Local Assessment procedure in July 2008. Parliament in 2007 also prescribed by Regulation a revised Model Code of Conduct which the Council adopted, with minor additions, on 15 October 2007.
- 3.3 The Government announced in May 2010 that its planned Localism Bill would include a proposal to 'abolish the Standards Board regime'. The standards part of the Bill was subject to a number of late amendments in the House of Lords, which the Government accepted without detailed review.
- 3.4 The Localism Act was passed in November 2011. The Government introduced a Commencement Order in mid-January 2012, to have effect from 31 January 2012. This ended the ability of Standards for England to accept new referrals from that date; and the Board will be abolished from 31 March 2012.
- 3.5 It is expected, subject to a further Commencement Order, that the remaining local elements of the statutory regime, including statutory standards committees with the power to suspend Councillors, will be abolished from 1 July 2012. Therefore

from 1 July 2012, all standards matters will be the responsibility of the local authority, to be handled under the new arrangements set out below.

3.6 In addition, regulations are expected from the Secretary of State to define declarable pecuniary interests.

4. LOCALISM ACT 2011 - SUMMARY OF CHANGES

4.1 The Localism Act makes major changes to the standards regime applying to local authorities. As part of these changes, the definition of interest is changed. Instead of personal and prejudicial interests, relating both to financial matters and to well-being, the Act reverts to the pre-2000 definition of *pecuniary* (financial) interest.

4.2 The Localism Act includes transitional arrangements to deal with individual standards complaints already in the system, and this part of the Act is already in force. The remaining provisions will be implemented by Regulations issued by the Secretary of State. A probable start date is **1 July 2012**.

4.3 The key features of the Act, in relation to standards, are as follows:

- the Statutory Instruments which govern the conduct of Members and which prescribe the Model Code of Conduct will be revoked
- the statutory requirement that local authorities must have a Standards committee will be abolished
- the Standards Board (Standards for England) has been abolished, and none of its functions will be transferred to other bodies.
- The First-tier Tribunal has lost its jurisdiction over the conduct of local authority members.
- Each local authority now has a statutory duty to promote and maintain high standards of conduct by its Councillors and co-opted members
- Local authorities have the discretion to establish a voluntary standards committee to consider complaints about the conduct of Councillors and co-opted Members, with the ability to censure the Member, but not to suspend or disqualify
- A local authority must adopt its own Member code of conduct, in place of the statutory code
- There is no longer a mandatory code, and local authorities now have discretion over the contents of their code. However, the code must be consistent with the general principles of behaviour in Part 4 of the current code (the *Nolan Principles*): these are -
 - Selflessness
 - integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

- The code must also include provisions in respect of Members registering and disclosing their interests - including maintaining a public register of interests
 - Members must register and disclose both pecuniary interests and “interests other than pecuniary interests”. The current definition of “personal” interest disappears.
 - Individual local authorities may determine what interests are to be entered in their register. However, the Act requires all Members - including co-opted Members - to register and declare *disclosable pecuniary interests*.
 - The definition of a *disclosable pecuniary interest* will be specified by Regulations made by the Secretary of State: these should be issued by April 2012.
 - A *disclosable pecuniary interest* will extend to spouses, partners and civil partners - but not (it appears) more widely to relatives, friends or close associates.
 - Members must disclose pecuniary interests within 28 days of election or when they become aware of the interest.
 - An interest that is recorded in the public register need not be declared at a meeting, but if Members have a *disclosable pecuniary interest*, then they cannot take any part in the discussion or decision-making at the meeting (so therefore in practice they will have to disclose it)
 - An authority may make Standing Orders to provide for the exclusion from meetings of Members who have a *disclosable pecuniary interest*.
- 4.4 The authority must put in place arrangements to investigate and decide on allegations of breaches of its code. However, the Act has abolished the statutory standards regime established by the Local Government Act 2000. Therefore there will no longer be any statutory provision for a local authority to suspend a Member who has been found to have acted in breach of the code.
- 4.5 These arrangements must include the appointment of an ‘independent person’ whose views the authority must consider before it makes a decision on an allegation that it has decided to investigate; and whose views may be sought by Councillors who are the subject of an allegation. The ‘independent person’ cannot be a current Member or officer of the authority, nor have served in either capacity during the five years immediately preceding their appointment.
- 4.6 An allegation that a Member has failed to disclose a known pecuniary interest will be handled differently. The Localism Act specifies that Members will commit an offence if they fail to disclose a known pecuniary interest and/or participate in the discussion and vote without reasonable excuse; or provide false or misleading information about their interest. The offence will be heard in court. The penalties available to the court are:
- A fine of up to £5,000
 - Disqualification of the person from being a Member of the authority, or any other authority, for up to 5 years

4.7 The statutory conduct regime will continue to function at a local level, considering, investigating and determining allegations of breaches of the Member Code, until a fixed date ("the appointed day"), which is expected to be 1 July 2012. The national arrangements, involving the Standards Board for England, were ended on 31 January 2012.

5. FUTURE LOCAL ARRANGEMENTS

5.1 The Localism Bill will have the effect of returning local government to the situation before the Local Government Act 2000 and the introduction of the statutory standards regime from 2002. In this regard, the Council first set up a local Standards Panel in 1999. It did not adopt a formal Member Code of Conduct until required to do so, in 2002. Instead the Standards Committee adopted principles for dealing with complaints that were flexible, depending on the source of the complaint (ie public, other Councillors, staff), but informed by the authority's three-stage complaints process for dealing with complaints about services. The starting point in each case was that the complaint should normally be referred at first stage to the Leader of the Councillor's Group to be investigated under the Group's own disciplinary procedure.

5.2 General

5.2.1 Section 27 of the Localism Act 2011 places a duty on local authorities to promote and maintain high standards of conduct by Councillors and co-opted Members of the authority. Section 27(2) requires the local authority to adopt a code dealing with the conduct of Councillors and co-opted Members when they are acting in those capacities.

5.2.2 Since 2000, Parliament has approved two Model Codes. The first was issued for adoption in 2002. The second was approved in 2007, following an extensive period of consultation by the Department of Communities and Local Government (DCLG) through the Local Authorities (Model Code of Conduct) Order 2007 on 4 April 2007.

5.2.3 The first Model Code included the general principles of public life set out by the Committee for Standards in Public Life (the Nolan Committee), which were repeated in the White Paper *Modern Local Government: In Touch with the People*, issued in 1998. The 2007 Model Code did not include them, but the Regulations cross-referred to them. The Council's local Code, adopted in 2007, retained the general principles, which cover the following areas:

- Selflessness
- Honesty and integrity
- Objectivity
- Accountability
- Openness
- Personal judgment
- Respect for others
- Duty to uphold the law
- Stewardship
- Leadership

5.2.4 The Localism Act 2011 has repealed the statutory requirements both for a statutory Code of Conduct, and for Councillors and co-opted Members to agree to abide by the Code. However, as explained above, the Localism Act 2011 requires the authority to adopt a local Code.

- 5.2.5 Section 28 of the Localism Act deals specifically with the Code of Conduct. Under para. (1), the adopted Code must be consistent with the general principles set out in 4.3 above, which reflect some of the Nolan principles of behaviour.
- 5.2.6 Under Sections 28(4) and (6), the authority must put in place arrangements under which any allegation of a failure by a Councillor or co-opted member to comply with the local Code of Conduct must be dealt with. This includes the both the investigation and taking a decision on such allegations.
- 5.2.7 The Code must also include specific provision for the register and disclosure of interests, and in particular pecuniary interests. Under Section 30(3) of the Localism Act, the Secretary of State will issue Regulations to specify the definition of a disclosable pecuniary interest. These Regulations have not yet been issued.

5.3 Member Code of Conduct

- 5.3.1 The current Code is attached at **Appendix A**. The Council did not have a local Code before 2002.
- 5.3.2 The Code is now a known and public document of reference. Given its current statutory basis (which will end), over the past 10 years the Standards Board, the Tribunal and the courts have defined aspects of its interpretation. However, in recent years, some court interpretations have not always supported the guidance previously issued by the Standards Board: this has been the case recently particularly with regard to bringing your office or authority into disrepute.
- 5.3.3 The Council will have to adopt a local code from 2012. Under Section 28(5), the Localism Act allows a local authority to revise the existing Code of Conduct, or adopt its own replacement. In either case, the code will have to include the provisions that the authority considers appropriate for the registration and disclosure of interests (Section 28(2)).
- 5.3.4 We understand that a number of interested bodies (including ACSeS) are working on revised versions of the model Code of Conduct. The Secretary of State's Regulations on disclosable pecuniary interests are also awaited. Until such documents are available for consideration, we consider that it makes sense for the Council to base its local code on the current Model Code, subject to its modification to include the general Nolan principles identified in Section 29(1) of the Localism Act, and quoted in para. 4.3 above; and also to include specific provision for the registration and declaration of interests - pecuniary and otherwise. In particular, the Model Code, and the accompanying good practice advice that has been issued by Standards for England over the years, are helpful in setting the parameters for which types of complaint would normally be looked into, and which would not.

5.3.5 *We recommend:*

(1) That the Council's current Member Code of Conduct be adopted as the authority's local code of conduct for the Municipal Year 2012/13, modified to include revised reference to:

- o The Nolan Principles set out in the Localism Act 2011*
- o Specific provisions for the registration and declaration of pecuniary and non-pecuniary interests [subject to issue of regulations by Secretary of State]*

5.4 Local Standards Committee - Terms of Reference

- 5.4.1 There is no specific reference in the Act to local Standards Committees. However, Section 28(6) of the Localism Act 2011 requires a local authority to have in place arrangements under which allegations about Councillors and co-opted members can be investigated. These arrangements can include a local Standards Committee.
- 5.4.2 A local Standards Committee will have to be set up, by full Council, as a committee under Section 101(a) of the Local Government Act 1972. It will therefore be subject to the statutory provisions concerning proportionality and access to information as any other Committee of the authority.
- 5.4.3 The terms of reference and operating arrangements of the Council's current Standards Committee are set out in Article 9 of the Constitution. These are attached for reference at **Appendix B**.
- 5.4.4 The terms of reference of the pre-2002 Standards Panel were as follows:
- (1) To scrutinise the conduct of individual Councillors, political groups and informal groupings.
 - (2) To monitor the probity and propriety of all aspects of Council business.
 - (3) To issue reprimands to individual Councillors or groups of Councillors in circumstances where breaches of the law, codes of practice or other conduct considered inappropriate have been established.
 - (4) To advise the Council on the adoption or amendment of codes of conduct with particular reference to any mandatory or advisory model or recommended codes of conduct and to monitor their effectiveness.
 - (5) To advise on effective implementation of any such codes, including the training of Councillors.
 - (6) To advise the Council on appropriate action on matters referred to the Council by the National Standards Board (when established).
 - (7) To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.
 - (8) To refer any matter considered by the Panel for investigation by the Council's Chief Auditor (or other appropriate officer), the Council's external auditors, the Audit Commission or the National Standards Board (when established) as it sees appropriate. The Panel may also refer any such matter to the relevant Political Group(s) for their consideration.
- 5.4.5 By cross-reference, all of the above were incorporated into Article 9, either directly or in a modified form to reflect the new statutory regime. Article 9 also includes other provisions that flow from the statutory regime that the Localism Act will end. The references above to the Audit Commission and National Standards Board will no longer be relevant.

5.4.6 *We recommend:*

- (1) *That the Council's arrangements for dealing with allegations that Members may have failed to comply with the local Code of Conduct include a local Standards Committee*
- (2) *That the terms of reference for the local Standards Committee should be based on those adopted in 1999, but modified to remove the references to the National Standards Board and Audit Commission; and to include specific provisions for considering complaints and the results of investigations referred to it under stage 3 of the Council's Member complaints process.*

5.5 Standing Orders and Operational Arrangements

- 5.5.1 The Localism Act requires local authorities to adopt arrangements to deal with allegations that Members have not complied with their local code of conduct. It also allows local authorities to make Standing Orders relating to aspects of the standards process (see Section 31(10)).
- 5.5.2 Before 2002, and the adoption of the Council's constitution, there was also a Standing Order governing the conduct of business by the Standards Panel. This too was incorporated into Article 9 where this was consistent with the new statutory regime. We set out below the 1999 Standing Order, together with our comments, in italics, on current practicality:

- (1) The Standards Panel shall have a membership of seven elected Members of the Council appointed on the basis of the proportionality rules contained within the Local Government & Housing Act 1989, subject to each registered political group on the Council having an entitlement to at least one seat. Each political group may nominate substitute members and those members may attend in place of the appointed members provided that they have received training similar to that received by the members of the Panel.

The current Committee has 8 Members, of whom 5 are Councillors and 3 are independent (appointed) Members. The five Councillors were appointed for this Municipal Year on a 2:2:1:0 proportion. The size of the Committee may need to vary from year to year to ensure the best fit with the political composition of the Council for each Municipal Year. The overall size of the Committee, including any independent Members (see below) should not normally exceed 10 members.

- (2) The membership of the Panel shall include one co-opted Member to be selected from the Regional List created by the National Standards Board once established.

The principle of the Committee continuing to have independent members was accepted before 2002, and is supported by the current Standards Committee. However, they should not outnumber the Councillor membership, and should not adversely affect proportionality.

The Committee currently has 3 independent members, of whom 2 (including the Chairman) have indicated their desire to stand down from May 2012.

The Localism Act has repealed the restrictive regulatory provisions governing the recruitment and appointment of independent Members, and therefore will allow greater flexibility, both in terms of who may be selected and of the process of appointment.

We recommend:

- 1) *that the principle be agreed of continuing to have independent co-opted membership of any successor local Standards Committee, subject to the number of co-opted members not exceeding one third of the Panel's total membership, and the minimum requirement being one co-opted member;*
- 2) *that the remaining independent Member (Mrs Tina Barnes) be invited to continue to serve on any successor local Standards Committee as a co-opted Member.*
- (3) The Leader and Deputy Leader of the Council may not be Members of the Standards Panel.

Currently the Leader may not be a Member; and no more than one member of the Cabinet may be a member. We recommend that this arrangement should continue.

- (4) The Chair of the Standards Panel may not be a Member who is also a Member of the Executive.

Currently the Chairman must be an independent Member (non-Councillor). This regulatory requirement will end.

If the Council chooses to set up a local Standards Committee for the Municipal Year 2012/13, it will do so under Section 101(a) of the Local Government Act 1972. We consider that there are good arguments for having any Section 101(a) Committee set up by the authority to be chaired by a Councillor member of the authority, as part of Councillors taking more direct and public responsibility for setting the standards of conduct for themselves and their colleagues.

- (5) The quorum for the Standards Panel shall be four Members.

The current quorum is 3 Councillors and 1 independent Member. We consider that 4 is a reasonable quorum for a local Standards Committee, subject to the caveat that the quorum must include Councillors from more than one political group

- (6) Decisions by the Standards Panel shall be reached by a simple majority vote but any two Members of the Panel present at the meeting where a decision is taken shall be able to require any matter considered by the Panel to be referred for investigation to the Council's Chief Auditor, the Council's External Auditors, the Audit Commission or the National Standards Board as appropriate.

The reference to the Audit Commission and the National Standards Board will no longer be relevant. Otherwise we would support decision-making by a majority vote, subject to Councillors from more than one political group being present at the meeting

- (7) Meetings of the Panel may be called by:
 - (a) the Chief Executive or
 - (b) the Monitoring Officer or

- (c) the Leader of the Council or
- (d) the Chair of the Panel or
- (e) a petition signed by at least one fifth of the Councillors serving on the Council (ie nine Councillors)

subject to notice having been given in accordance with the provisions of the Local Government Act 1972, as amended."

To reinforce the key role of Group Leaders in the local standards process, we would suggest that consideration be given to allowing any Group Leader to call a meeting of the voluntary local committee.

One fifth of the Council now means 10 Councillors.

5.5.3 *We recommend:*

- (1) *That the Council adopt Standing Orders for the local Standards Committee based on the 1999 Standing Orders and operational arrangements, updated as suggested above.*

5.6 Principles for Dealing with Complaints

5.6.1 The Standards Board, in 1999, adopted the following principles for dealing with complaints about Councillors, through a three-stage complaints process, which we recommend should form the basis for a new voluntary local system, subject to our comments in italics below :

- (1) The process by which a complaint against a Member will be dealt with will vary slightly, depending on the sources and nature of the complaint. All complaints received against Members regardless of how they are dealt with, will be kept in a register held by the Monitoring Officer that will record details of the complaint and its resolution.

Support. The current arrangement, where the Monitoring Officer submits an annual report to a public meeting of the Standards Committee, including an anonymised schedule of complaints made about Councillors, should continue.

- (2) The Political Groups have their own procedures which might be called upon to deal with complaints at the first stage. A complaint would be referred to the appropriate Party Leader by the Chief Executive. The Party Leader would then respond to the complainant and send a copy to the Chief Executive for the record.

Support in part.

One of the problems with the former statutory procedure, and especially following the delegation of investigations to local authorities, was the removal of a flexible filter process whereby the Chief Executive or Monitoring Officer could undertake an informal review of the complaint, either to see whether there was any merit in pursuing it, or whether it might be susceptible to speedy remedial action, such as an apology from the Councillor complained about, which resolved the grievance.

As explained under 'Sanctions' below, the removal of the statutory powers of Standards Committees to invoke sanctions under the Local Government Act 2000 will place greater emphasis on Group disciplinary processes for ensuring

that Group members comply with the duty, introduced by the Localism Act, to promote and maintain high standards of conduct.

We therefore recommend:

- (1) That all complaints about Members not complying with the local Code of Conduct be referred straight away to the Monitoring Officer, who will record them*
 - (2) That the Monitoring Officer be authorised to review the complaint, and take one of the following courses of action:*
 - a. Reject the complaint on specified grounds (see 5.6.2 below)*
 - b. Explore the complaint informally with the complainant and subject Member, to see whether grounds might exist for an informal local settlement*
 - c. Refer the complaint to the subject Member's Group Leader, for investigation under the Group's disciplinary procedure*
 - (3) This will require all political groups to adopt their own disciplinary or complaints procedures, which the Group Leaders must share and agree with the Chief Executive and Monitoring Officer.*
- (3) If the complainant is dissatisfied with the response, a second stage might be invoked. This would involve the complaint being investigated by either an external person (if this was thought appropriate) or internally by, say, the Chief Executive or the Monitoring Officer or another senior officer nominated by the Chief Executive.

Support. An external investigation is likely to incur a cost (fee), and should be avoided wherever possible. In responding to individual complainants, the Group Leaders should follow a letter template which sets out the courses of action open to the complainant if s/he remains dissatisfied with the first stage response.

At this stage of the process, the Monitoring Officer will share the complaint with the Independent Person and invite his/her views.

- (4) Whilst it is important that the Chief Executive has overall management of the complaints process as Head of the Paid Service, the Monitoring Officer also plays a significant role in the investigatory process. Because of the necessary relationship between the Chief Executive and Leading Members of the Authority, it may not always be appropriate, or possible, for the Chief Executive personally to carry out investigations. In such circumstances, it might be appropriate for the Monitoring Officer to carry out the investigation or for the Chief Executive to nominate another senior officer or an external individual to do so. It is important for Members to appreciate that the Chief Executive and the Monitoring Officer act as a "check and balance" on each other's actions in this as in other matters.

Support.

- (5) If the complainant is still dissatisfied, the matter would then be referred to the Standards Panel at the third stage. The Panel would consider a report outlining

the results of the previous stages and decide whether any further investigation was needed before it arrived at its own conclusions.

Modify.

Remove the right for the complainant to require a complaint to go to the Standards Panel.

This decision should be for the Chief Executive or Monitoring Officer, having regard to the views of the Independent Person

Before making any reference to the Standards Committee, the Monitoring Officer will set out the views of the Independent Person in the report to the Standards Committee.

At this stage, the meeting of the Standards Committee will be held in public, with an agenda published five working days before the meeting. The Committee will be subject to the access to information provisions of Section 100(A) of the Local Government Act 1972, and may only resolve to exclude the press and public if it considers that there will be a disclosure of exempt information as defined in that Section, or confidential information on a third party as defined in Section 40 of the Freedom of Information Act 2000.

The limited sanctions available to the Committee are considered below in para. 5.7 below.

- (6) The stage at which a complaint enters the process will depend upon the nature of and implications flowing from it. It might be appropriate to start the process at a different stage or proceed by a different order. The general principle would be that a complaint would be dealt with at the most appropriate point at the first stage and would then be escalated to a higher authority and eventually to the Standards Panel if the complainant was not satisfied.

Support, subject to adding the preliminary filter of complaints by the Monitoring Officer. It is important that the process is operated flexibly and with common sense. The current statutory process is administratively complex and slow because of the requirements to follow a prescribed process and the possibility of legal challenge.

- (7) The following are examples of how a complaint might be dealt with depending on the source of the complaint.

The Public

- i. The principles described above could be applied to complaints from members of the public.
- ii. However, if a complaint could not be resolved through the various stages described, the complainant would be advised to consider taking the complaint to the Local Government Ombudsman. If the Local Government Ombudsman considered that a member had been at fault to the extent of breaching the Code of Conduct or the law, the Ombudsman will name the member concerned in the Report.
- iii. In the event of a member being named in a report by the Ombudsman, the matter would be referred to the Standards Panel.

The reference to the Member Code of Conduct will need to be modified. The Ombudsman's principal focus is on actions of maladministration that cause injustice, and this is where emphasis should be placed. This can include a failure to act. The Ombudsman can make findings of maladministration against a Councillor, and grounds for such a finding could include a failure by a Councillor to follow any agreed local protocol.

Ombudsman

- iv. Irrespective of the origin of the complaint to the Ombudsman, if a member were named in a report by the Local Government Ombudsman, it would be appropriate for that report to be referred to the Standards Panel. In all cases where the Ombudsman issues a report, a local authority is obliged to advertise the fact and, where there has been a finding of maladministration, to tell the Ombudsman what action it proposes to take.

Councillors

- v. Occasionally, there are complaints by one Member about the conduct of another Member. More often than not such complaints arise as a result of something said during a heated debate in the Council Chamber.
- vi. Members are protected by qualified privilege with regard to anything they say in the course of carrying out their functions as Councillors and this includes debate in the Council Chamber.
- vii. It would seem inappropriate for such complaints to be referred to the Standards Panel, unless the Chief Executive or the Monitoring Officer considered there to be a significant breach of Standing Orders or the Council was in danger of being sued for defamation. Such cases should, perhaps, be referred to the Party Leader or Leaders concerned, in the first instance, to see if the matter can be resolved within the political group's own procedures.
- viii. If the complaint could not be resolved at this stage, it could be referred to the Standards Panel.
- ix. The route for dealing with complaints about other matters, eg allegations of misuse of Council property, might depend upon the seriousness of the allegation and the potential consequences for the Council.

Staff

- x. Complaints by staff against members usually arise when a member of staff feels that they have been unfairly criticised or are being harassed by an elected member. Conduct of this nature by another member of staff would lead to a complaint in accordance with either the grievance procedure or the harassment procedure. However, those procedures do not make any provision for circumstances where the complaint concerns an elected member.
- xi. It would seem appropriate, therefore, that those procedures should indicate that complaints against members will be referred to the relevant Party Leader in the first instance. If not resolved to the satisfaction of

the member of staff concerned, the complaint could then be investigated by the Chief Executive, the Monitoring Officer or other senior officer nominated by the Chief Executive. A course of action or solution would be recommended.

- xii. If this did not produce a satisfactory resolution or the complaint persisted, it would be referred to the Standards Panel.

5.6.2 In July 2008, the Reading Standards Committee adopted a local procedure for dealing with *Complaints about Councillors*, to support local assessment. This can be accessed from the Council's website. It is based on good practice advice from Standards for England. It contains a list of complaints which it says the Assessment Sub-Committee will normally reject, as follows:

- Anonymous complaints
- Complaints about actions that occurred more than 12 months before;
- Complaints about comments made in the cut and thrust of political debate;
- Minor complaints that it sees as trivial, vexatious, malicious, politically motivated or made on a tit-for-tat basis - unless these suggest a more deep-seated problem;
- Complaints that are similar to a previously investigated complaint where there is nothing further to be gained from an investigation;
- Complaints about a Councillors' private life which are unlikely to affect their fitness for office;
- Complaints where there is insufficient information to justify an investigation, or where an investigation is unlikely to be able to come to a firm conclusion on the matter

5.6.3 *We recommend:*

(2) That the Council adopt arrangements for dealing with allegations that Members have not complied with the local Code of Conduct based on the above

(3) That the revised local Procedure for dealing with Complaints about Councillors be updated to set out the new arrangements

(4) That the local Procedure continue to be published on the Council's website, and to include the list of matters which will normally be rejected, as set out in 5.6.2 above.

5.7 Sanctions

5.7.1 The Localism Act 2011 has abolished the statutory standards regime set up by the Local Government Act 2000. Therefore the range of sanctions prescribed by the 2000 Act are no longer available. This means that a local Standards Committee will no longer be able to suspend, or partially suspend, a Councillor for up to six months, or require the Councillor to provide a written apology, or to undertake training or conciliation.

5.7.2 The lawful sanctions that are available to the local Standards Committee, therefore, are those that were available to a committee set up before the 2000 Act, and they must be exercised by the Committee in a lawful and proportionate manner with due regard to the particular facts and circumstances of the case. They amount to:

- A formal letter to the Councillor found to have breached the code

- A formal censure motion
 - A formal request to the Councillor's Group Leader to replace him/her as a member of a committee or meeting
- 5.7.3 The Committee meeting will be held in public (unless confidential or exempt information is being considered), and therefore will carry the informal sanction of bad publicity. The Committee may also issue a press release setting out its conclusions. The Committee minutes will be a public document, and published on the Council's website.
- 5.7.4 The Committee could suggest to a Councillor and/or the relevant Group Leader that the Councillor should provide a written apology and/or undertake training or conciliation. However, it will no longer have the power to require compliance.
- 5.7.5 The newly-constrained legal basis of the local Standards Committee - and therefore of the authority - will have the effect of placing greater responsibility for ensuring compliance by Councillors with the duty to promote and maintain high standards of conduct with their political Group, and in particular the Group Leader and Whip. This is why this report has recommended, at para. 5.6.1 (2), that the Monitoring Officer should refer complaints which s/he considers s/he cannot resolve informally to the Group Leader at stage 1 of the complaints process, to give the Group the opportunity of remedying the complaint before it becomes the subject of a more formal investigation.

5.8 Independent Person

- 5.8.1 The Localism Act 2011 requires the local authority, as part of its arrangements, to appoint at least one independent person (IP), with the following responsibilities:
- The authority must seek the IP's views, and take them into account, before making a decision on an allegation that it has decided to investigate
 - The authority may also seek the IP's views in other circumstances
 - A Member who is the subject of an allegation may seek the IP's views
- 5.8.2 Therefore, under the three-stage procedure suggested in this report, the Monitoring Officer must seek the IP's views before taking a complaint to the Standards Committee at stage 3; and may do so at an earlier stage in the process, such as when receiving the response of the Group Leader at stage 1, and/or instituting an investigation at stage 2.
- 5.8.3 Under Section 28(8), the IP cannot be a person who has been a member or officer of the authority during the five year period before his/her appointment as the independent person. Therefore, the IP cannot be a current non-Councillor member of the old (statutory) standards Committee. This means that none of the independent Members of the 2011/12 Standards Committee may be appointed as the authority's IP for the new Municipal Year.
- 5.8.4 Section 28(8) also sets out the process by which an authority must appoint its IP. This follows the (former) statutory process for appointing non-Councillor members of the (old) Standards Committee. It has the following features:
- The appointment must be made by full Council - it cannot be delegated
 - The IP cannot be a relative or close friend of a serving Member or officer of the authority
 - The vacancy for the IP must be advertised to the public, and the person appointed must have submitted an application to fill the vacancy

- The IP, when appointed, may be paid Special Responsibility Allowance in respect of their duties as IP, and this does not affect his/her independence of the authority

5.8.5 *We therefore recommend:*

- (1) *That the MO works with the Committee and Group Leaders to prepare a job description, person specification and advertisement for the position of Independent Person, and to agree the process and timetable for advertising and recruiting to this new position, before 1 July 2012*
- (2) *That consideration be given to paying the Independent Person, when appointed, a modest Special Responsibility Allowance*

6. CONTRIBUTION TO STRATEGIC AIMS

- 6.1 One of the Council's strategic aims is to promote the participation of Reading people in local democracy through effective consultation and communication. This is only likely to be successful if people have confidence in the integrity of the Council and its members. A Standards Committee will assist in building and maintaining that confidence.

7. EQUALITY IMPACT ASSESSMENT

- 7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 7.2 It is not considered that an Equality Impact Assessment (EIA) is relevant to the decisions arising from this report. This is because the report concerns the adoption, by the Council, of new operating arrangements to comply with changes in legislation.

- 7.3 The current, Model Code of Conduct includes a general obligation on Members not to do anything which may cause the authority to breach any of the equality enactments as defined in Section 33 of the Equality Act 2006. This report, in recommending that the model Code should form the basis of the Council's new local code, will continue this obligation.

8. LEGAL IMPLICATIONS

- 8.1 The standards regime applies to voting Members of Council and Cabinet Committees, including both Councillors and non-elected Members (such as the independent Members of this Committee).
- 8.2 Part III of the Local Government Act 2000 established a legal framework for conduct of local government Members and officers, which the Government implemented this framework through the issue of Regulations under Section 66 of the Act, including the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.

- 8.3 Chapter 3 of the Localism Act 2011 (Sections 26 to 37) has ended the statutory requirement for local authorities to have a Standards Committee, revoked the Model Code of Conduct, and abolished Standards for England and the current statutory facility for disqualification through the First-Tier Tribunal. It has replaced these by a duty on local authorities to promote and maintain high standards of conduct by Members, and a requirement to adopt a local code of conduct, and arrangements for investigating allegations that Members had not complied with the local code. Local authorities will be able to continue to appoint Standards Committees, but these will not have any statutory status, and there will be no statutory basis for sanctions in cases of breach. The exception to this is where a Member intentionally fails to declare a declarable pecuniary interest, in which case the member may be found guilty of a criminal offence.
- 8.4 Chapter 3 will be enacted by Commencement Order (Regulation). The relevant order ending the national standards regime came into effect on 31 January 2012. The Order changing the local regime is expected to come into effect from 1 July 2012. Before then, the Secretary of State will have to issue Regulations dealing with the definition, registration and declaration of pecuniary interests.
- 8.5 Under Section 28(13-14) of the Localism Act 2011, the function of adopting, revising or replacing a local code of conduct may only be discharged by full Council, and it may not be delegated to the Standards committee or any other body or person.

9. FINANCIAL IMPLICATIONS

- 9.1 Subject of course to the number of allegations made against Members of the authority, local investigation and determination have generated additional work for the Monitoring Officer and any other officer who undertakes an investigation. In addition, the Standards Committee currently is required to set up sub-committee meetings to assess all complaints received, and to hear the individual allegations (if the MO believes that there is a case to answer), which will have associated costs of administrative support.
- 9.2 This report recommends moving back to a more informal, local system, where the first stage focus is on complaints about individual Councillors being pursued within political groups, and any subsequent investigations taking place within a process which is appropriate to the individual complaint, not governed by restrictive external processes, and less resource intensive.
- 9.3 There is no specific budget line in the Council's estimates for standards, or the costs of investigating complaints about Councillors.

10. BACKGROUND PAPERS

DCLG Letter, 15 October 2010 - Conduct of Local Authority Members (Bob Neill MP)
LGG /ACSeS Briefing Paper - Maintaining High Ethical Standards in Local Government - February 2011
ACSeS Press release and Advice - Standards - Sanctions and independent persons - 16 January 2012