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## Report of the City Solicitor

### Corporate Governance and Audit Committee

Date: 18<sup>th</sup> July 2011

Subject: Localism Bill – Outcome of initial consultation

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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## Executive Summary

1. The purpose of this report is to provide an update on the proposals in the Localism Bill about ethical governance issues, and to outline the results of the first round of consultation with various stakeholders on the future of the ethical framework in Leeds.
2. No final decisions can be made at this stage, as the provisions of the Localism Bill are subject to change until the Bill receives Royal Assent (which is expected to be in November or December 2011). These results are therefore only being presented for information in advance of further dialogue with each Political Group.
3. Corporate Governance and Audit Committee is asked to note;
  - and comment upon the outcome of the initial consultation exercise;
  - the timetable for further consultation contained in Appendix 2.

## **1.0 Purpose of this Report**

- 1.1 The purpose of this report is to provide an update on the proposals in the Localism Bill about ethical governance issues, and to outline the results of the first round of consultation with various stakeholders on the future of the ethical framework in Leeds.
- 1.2 No final decisions can be made at this stage, as the provisions of the Localism Bill are subject to change until the Bill receives Royal Assent (which is expected to be in November or December 2011). These results are therefore only being presented for information in advance of further dialogue with each Political Group.

## **2.0 Background Information**

- 2.1 The Localism Bill proposes to abolish the 'Standards Board regime' in its entirety. The Government has made clear in the Bill that under the new arrangements Councils will be free to adopt their own voluntary Code of Conduct and set up a standards committee to consider complaints under this code. Whilst unlikely, amendments considered during the passage of the Bill, and currently under consideration in the House of Lords, may also result in Local Authorities being compelled to adopt a code, possible one drafted nationally.
- 2.2 In the event of the Bill remaining unchanged, i.e. with each local authority having discretion whether to adopt a local code of conduct, consultation took place prior to the local elections to establish whether there was any appetite to adopt a voluntary code of conduct in Leeds. The consultation focussed upon the views of the Leaders of each political group, the Group Whips, Corporate Governance and Audit Committee, and the Standards Committee. Each consultee was asked for their opinion on the five questions listed in Appendix 1. These same questions were also asked of the other West Yorkshire authorities in order to establish whether there was any possibility of introducing regional arrangements. The results of this consultation are summarised in this report, along with a series of options to be explored.
- 2.3 In January 2011, Communities and Local Government published a series of Impact Assessments on different aspects of the Localism Bill including on the subject of "The abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests".

## **3.0 Main Issues**

### **Consultation response within Leeds City Council**

- 3.1 The general consensus at both the Standards Committee and Group Whips meetings was that it was too early to determine exactly what arrangements the Council might adopt as the Bill had not yet received Royal Assent. However there was broad acceptance of a need to continue to explore the potential implications of the Bill for Leeds, and particularly that this process should be Member led.
- 3.2 This report provides feedback to previous consultees on the views expressed during the initial consultation phase and proposes a method and timetable for further dialogue on the possible arrangements which Leeds City Council might adopt.

## **Option 1 – To withdraw the existing code of conduct without replacing it.**

- 3.3 Whilst none of the respondents to the consultation completely favoured this option a number of individual members (individual Whips and Standards Committee members) did favour this approach.
- 3.4 Despite allowing for this possibility in the Localism Bill, the impact assessment published by the Department for Communities and Local Government (DCLG) has assumed authorities will retain at least some aspect of the local standards framework. This being because authorities will need to demonstrate and assure themselves that the new duty proposed by the Localism Bill to “promote and maintain high standards of conduct by members and co-opted members of the authority” is being complied with.
- 3.5 DCLG has also identified that there may be a risk of standards of conduct amongst councillors worsening in those local authorities that decide not to adopt a code of conduct for their Councillors. DCLG suggest that this may occur due to Councillors knowing that their conduct will not be investigated by the authority and therefore acting without fear of sanction.

### **Possible mitigation of these risks**

#### Existing statutory framework

- 3.6 It is argued that the above risks are mitigated, at least in part, by the existing statutory framework. In the Impact Assessment the Government outlines that the most common breaches of the Code since May 2008 have related to failure to treat others with respect (30%), followed by breaches related to the register of interests and using the position of Councillor for personal gain (28%), and acting in a manner which could bring their office or authority into disrepute (20%). The Government believes that the risks of this behaviour continuing unchecked is mitigated in part where the cases are serious enough to involve slander or libel, by the laws of defamation enforced by the civil courts. Those related to misuse of position and interests will be mitigated by the new regulations and the creation of a criminal offence.
- 3.7 The Government believes that existing legal frameworks already provide remedies for the most serious types of misconduct. In summary, the existing legal framework covers the following issues:
- **The fiduciary duty of Councillors** – a Councillor is treated as a trustee of the Council’s assets, with a fiduciary duty to apply those assets in the public interest, and therefore when a Councillor abuses that trust they can be held personally liable for the resulting loss.
  - **Libel and slander** – an individual could claim that they have been libelled or defamed by a Councillor, but the Council itself cannot be libelled.
  - **Misfeasance in public office** – a Councillor can be accused of having misused or abused their power either through ‘targeted malice’ or ‘untargeted malice’. Targeted malice will occur when a Councillor intentionally abuses their position with the motive of inflicting damage on the claimant. Untargeted malice would occur when a Councillor acts knowing that they have no power to undertake the act complained of.
  - **Equalities and Discrimination law** – this would prevent Councillors from treating anyone less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability.

- **Criminal offences** – a Councillor who is sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of section 80 of the Local Government Act 1972. The Government has also stated that section 80 may be revised in future to cover other aspects of misconduct. The Fraud Act 2006 would ensure that a Councillor could not use their position to support or influence a planning application that they have a financial interest in or otherwise use their position for self financial gain. The Bribery Act 2010 prevents the offering, promising or giving of an advantage, or requesting, agreeing to receive or accepting an advantage in a public office. Both offences under the Fraud Act or the Bribery Act could result in a penalty of 10 years imprisonment or an unlimited fine, or both. The Malicious Communications Act 1998 covers the sending of letters or other communications (including electronic communications) which are grossly offensive or threatening and which are sent for the purpose of causing distress or anxiety. Such an offence could result in imprisonment for no longer than 6 months or a fine of up to £5,000, or both.
- **Electoral offences** – under the various acts governing the conduct of elections, Councillors are prevented from exerting (or intending to exert) undue influence on voters, using bribery, treating, personation, and providing false information in nomination papers or in relation to the registration of electors. Under the Electoral Administration Act 2006 Councillors are also prevented from supplying false information to the electoral registration officer and making fraudulent applications for a postal vote. The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.
- **Maladministration** – the Local Government Ombudsman has responsibility for investigating maladministration causing injustice. This includes things that have gone wrong in the way a service has been given or the way a decision has been made, and individual or collective actions or failings of Councillors may amount to maladministration.
- **Bias and predetermination** – the Localism Bill proposes to clarify the rules surrounding bias and predetermination. These rules provide that a Councillor cannot take part in the decision making process where they have a closed mind on the matter. This would make the decision itself unsafe, but would have no implications for the individual Councillor.

3.8 There are also legal remedies available to anybody who is subject to intimidation or harassment, whether or not they are an employee. The Protection from Harassment Act 1997 makes it an offence for a person to pursue a course of conduct which “amounts to harassment” or “which he knows or ought to know amounts to harassment”. This Act gives people who are subject to harassment a right to go to the civil courts to obtain an injunction and damages. A council, as an employer, could consider undertaking proceedings to support an employee under the Act, if it felt that it was an extreme case.

#### New requirements relating to the registration and declaration of interests

3.9 The Government intends to create a new criminal offence of a Councillor deliberately failing to comply with the Regulations regarding the registration and declaration of interests. Complaints will be made either to the Monitoring Officer of the relevant authority or directly to the police. However, the Government has assumed that the complaints which are made directly to the police would initially pass back to the Monitoring Officer to investigate and potentially resolve without having to launch a formal investigation.

- 3.10 The Monitoring Officer will therefore be treated as the first port of call for all complaints relating to the failure of Councillors to register or declare personal interests. The Government has estimated that nationally there would be 750 complaints of this nature per year.
- 3.11 It has also been assumed that around 50% of such complaints will be dismissed by the Monitoring Officer without further action. It is further assumed that around 30% will be resolved locally without police involvement, for example, the requirement could be satisfied if the Councillor agrees that in light of the complaint they do have an interest and agrees to register it immediately. Indeed the Government is relying on local authorities to resolve as many complaints as possible in order to minimise the impact on the criminal justice system. The Government anticipates that the remaining 20% will be passed on to the police (nationally between 100 and 300 complaints per year).
- 3.12 Such complaints will have to be received regardless of whether the Council chooses to adopt a code of conduct or not.

#### Other remedies

- 3.13 The Government believes that the risks arising from breaches related to bullying others or disclosing confidential information could be mitigated by local authorities putting procedures in place to minimise these risks, such as having a protocol for Member / officer relations and through training. Similarly, possible breaches involving the misuse of Council resources could be dealt with by the temporary withdrawal of those resources or removing a Councillor as a member of a particular committee.
- 3.14 Finally, Councillors are ultimately accountable to their electorate through local elections every four years. However, the Public Bill Committee felt that elections are not an effective remedy for the public if their local authority decide not to adopt a code. In particular, committee members felt that the ballot box was no guaranteed remedy for the public against misconduct if there was strong support for a particular party within an electoral area.

#### **Further considerations in relation to this option**

- 3.15 Whilst not adopting a code of conduct may be perceived as not providing sufficiently robust arrangements for codifying the expected conduct of councillors, the legal framework does provide a mechanism within which concerns can be addressed.
- 3.16 In addition any complaints about the actions or inactions of a councillor could still be capable of being received within the Council's Corporate complaints processes and referred to the relevant group for consideration and a response. Additionally, should an officer wish to complain about the way a Member has treated them they could use the grievance procedure provided through Human Resources.

#### **Option 2 – To revise the Code of Conduct or to replace the Code of Conduct with a new one**

- 3.17 Both the Leaders of the political groups and the Corporate Governance and Audit Committee expressed the view that some form of code was needed in order to set out the standards expected of Councillors. There were varying opinions as to whether the Council should choose to adopt something drafted by a national organisation (in particular the Local Government Association), whether the existing Code of Conduct should be revised, or whether the Code should be replaced with some form of guidance note produced locally.

- 3.18 Since the consultation took place the Chief Executive of the Local Government Association has written to all Chief Executives of local authorities in February to outline that “local government is generally supportive of the abolition of the current regime, seeing it as over-bureaucratic, burdensome and too prescriptive”, and that the meeting of the LGA Leadership Board had agreed not to seek to establish a replacement framework within which Councillors should operate. Therefore the Council would need to adopt a code produced locally, or a code produced by a different organisation (such as the Association for Council Secretaries and Solicitors).
- 3.19 An pragmatic way forward for Leeds, emerging from discussions with Leader Management Team, may be for Leeds to simply adopt the Nolan Principles of Conduct in Public Life as a framework of conduct and behaviour which could be equally applied to officers and members. This approach will be further considered by members in the coming months.

#### Complaints process

- 3.20 The respondents to the consultation also generally agreed that the system for dealing with complaints would need to have a more rigorous filtering process so that more complaints could be resolved without having to be formally investigated, and would not need to be considered by a committee of Members unless it was potentially serious.
- 3.21 There were also varied opinions as to whether the same process should be used for all complaints against Members, or whether there should be different procedures for dealing with complaints from other Councillors, officers, or members of the public.
- 3.22 Again there appears scope for the Council’s corporate complaints system to be utilised for complaints against Members from members of the public. Initial consideration and response to complaints would not need the involvement of a separate committee or sub committee as logically complaints would be referred to political groups to responded to, only escalating further, say to a Standards Committee, should a complainant wish to appeal or if say, the allegation related to the new provisions regarding registration and declaration of interests.

#### **Benefits of this proposal**

- 3.23 The Government has identified one key benefit of their proposed changes to the standards regime, which is that by making Councillors accountable for their conduct at a local level (rather than a national level), standards of conduct will more closely reflect the expectations of local citizens. Adopting the Nolan Principles would also allow the Council to demonstrate that it will be fulfilling its new duty to promote and maintain high standards of conduct amongst its Members.
- 3.24 Additionally there would remain the new requirement and sanction proposed in the Bill for registration and declaration of interests by members, paragraphs 3.9 - 3.11 of this report refer.

#### **Further considerations relating to this option**

- 3.25 The consultees were asked various supplementary questions regarding this proposal, such as who should consider any complaints against Members and, if this was to be a Council committee, what form the committee should take.

## Standards Committee

- 3.26 Under the Localism Bill proposals a standards committee (or other committee or body with the similar functions) would not have the same powers to sanction Members as are currently available. Instead powers would be restricted to taking administrative measures to ensure that it could continue to discharge its functions effectively.<sup>1</sup> This may include barring a Councillor from particular resources or offices and from direct contact with certain officers. It may also include censure, training, or removing Councillors from particular positions within the Council. These powers are not punishments and cannot be exercised in a manner which prevents a Councillor from acting as a Councillor.
- 3.27 The Leaders of the political groups and the Corporate Governance and Audit Committee generally agreed that there may continue to be a legitimate role for a standards committee to consider complaints in some circumstances.
- 3.28 The same respondents felt that independent members (co-opted members of the public) could continue to provide a valuable input to a standards committee and that one of these members could also perform the role of Chair. However, since the consultation took place officers have looked into this suggestion further and can confirm that any co-opted member on such a committee would not be able to vote on any matter (this includes the use of a casting vote), unless the new standards committee was an advisory committee only.<sup>2</sup>

## Declaration of acceptance

- 3.29 Under the current regime Members must agree to abide by the Code of Conduct in place at the Council through their acceptance of office. If the Council were to put local arrangements in place these declarations would no longer apply, and Councillors would need to indicate their acceptance of any local code. Leaders commented that it would be advantageous to link the acceptance of office declaration to a declaration indicating an agreement to abide by any local code of conduct.

## **Option 3 – To enter into regional arrangements with other West Yorkshire authorities**

- 3.30 Consultees were asked whether they would wish to pursue regional standards arrangements with other West Yorkshire authorities which could include a standards committee, a code of conduct and administrative support. Some Leaders of the political groups in Leeds recognised that there may be some economies of scale in operating a regional system, however, generally speaking there has not been much support, particularly from the other West Yorkshire authorities.
- 3.31 All West Yorkshire authorities have been carrying out their own consultations on the questions posed in Appendix 1. As a result, the general consensus in each authority is as follows:
- **Kirklees** – Members would like a simpler code of conduct than the current code. There is no appetite for having a separate standards committee. Complaints will first be presented to an all party group advised by the Monitoring Officer, and if considered serious enough, will be forwarded to the Corporate Governance and Audit Committee for action. There will be no involvement from co-opted

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<sup>1</sup> These powers were confirmed by the Court of Appeal in *R v Broadland District Council ex p Lashley (2000)*.

<sup>2</sup> According to Section 13 of the Local Government and Housing Act 1989.

members of the public on the Corporate Governance and Audit Committee and Members do not wish to involve Parish Councils in their arrangements.

- **Wakefield** – Members would like to adopt a code of conduct, but the complaints procedure needs to be streamlined, in particular the time taken to assess complaints and carry out investigations.
- **Bradford** – Members do want to have local standards arrangements which involve co-opted members of the public. However, they do not wish to involve Parish Councils in those arrangements. Members did have some interest in the potential for a regional appeals sub-committee to consider appeals against local standards committee decisions.
- **Calderdale** – No comments.

### Involvement of Parish and Town Councils

- 3.32 Under the provisions of the Localism Bill, Parish Councils will be required to make their own arrangements for adopting a code of conduct and receiving and considering complaints against Members. Previously Leeds City Council has had responsibility for all the Parish and Town Councils in its area.
- 3.33 The Corporate Governance and Audit Committee and some of the Group Leaders felt that Parish and Town Councils should be offered the opportunity to 'buy in' to any arrangements Leeds City Council chooses to set up, if any. This might include providing them with a model code of conduct to adopt and allowing any complaints against their Members to be processed using Leeds City Council's system. Some Leaders expressed the view that any delegation of functions to Parish and Town Council's which the Council might contemplate should be conditional on that parish or town council adopting the local code of conduct arrangements of the City Council.

### **Timescales for further consultation and final decision**

- 3.34 The Localism Bill has now entered the Committee Stage in the House of Lords, and after this will progress to the report stage and third reading. Currently it is anticipated that Royal Assent might be gained in November or December 2011. The present conduct regime will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.
- 3.35 This means that until the appointed day, an allegation of misconduct can be made; after the appointed day, no further allegations of misconduct can be made under the present regime. It also means that at the appointed day, allegations may be in the process of investigation and that appeals against sanctions will be pending. The Government intends to introduce transitional measures to address this.

### The Government's Proposed transitional measures

- 3.36 Any cases in the system at the appointed day will make their way through a transitional regime. The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.



- 3.37 Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- 3.38 Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do is, for instance, to issue a Councillor with a censure or a request that they undergo training.

#### Timescales in Leeds

- 3.39 In order for a final decision on any future standards arrangements to be made before the Localism Bill comes into force, a decision will need to be made by full Council in either January or early February 2012. Prior to this the proposals will need to be considered by General Purposes Committee for the purposes of making a recommendation to full Council. These arrangements will be agreed to come into force once any transitional period ends i.e. once the last complaint has been concluded.
- 3.40 A timetable showing a further round of consultation and timescales for the implementation of the Bill is attached as Appendix 2 to this report.

### **4.0 Implications For Council Policy And Governance**

- 4.1 One of the principles in the Council's Code of Corporate Governance is good conduct and behaviour. Members need to consider how good conduct can be ensured once the Localism Bill comes into force, and removes the current standards regime.
- 4.2 It is also important that Members consider how the new duty for the Council to promote and maintain high standards of conduct by its Members can be fulfilled after the current standards regime ends.

### **5.0 Legal And Resource Implications**

- 5.1 The legal and resource implications are clearly set out in the main issues section of this report.

### **6.0 Recommendations**

- 6.1 Corporate Governance and Audit Committee is asked to note;
- and comment upon the outcome of the initial consultation exercise;
  - the timetable for further consultation contained in Appendix 2.

## 7.0 Background Documents

- Report of the Assistant Chief Executive (Corporate Governance) to the Corporate Governance and Audit Committee, “Implications of the Localism Bill for the ethical framework in Leeds”, 14<sup>th</sup> February 2011
- Minutes of the Corporate Governance and Audit Committee, 14<sup>th</sup> February 2011
- Report of the Assistant Chief Executive (Corporate Governance) to the Standards Committee, “Implications of the Localism Bill for the ethical framework in Leeds”, 16<sup>th</sup> February 2011
- Minutes of the Standards Committee, 16<sup>th</sup> February 2011
- Localism Bill 2010-2011
- “Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests – Impact Assessment”, by Communities and Local Government
- Letter from Bob Neill MP (Parliamentary Under Secretary of State) to Dr. Robert Chilton (Chair of Standards for England) on “Conduct of Local Authority Members”, 15<sup>th</sup> October 2010
- Public Bill Committee Debate: Localism Bill – Session 2010-11, Thursday 3<sup>rd</sup> February 2011 (morning session)