

Localism Bill – Options paper for the future ethical framework

Questions to be addressed

Please see paragraphs 2.3 to 2.10 of the background information for more details about the proposals contained in the Localism Bill and the options available to the Council.

1. Are we going to adopt a voluntary code of conduct?
 - a. If yes, should the Council:
 - revise the existing code of conduct¹; or
 - adopt a completely new code of conduct to be drafted locally?
 - b. If the Council wishes to adopt a completely new code of conduct, what types of behaviour / situations should this cover?
2. If a code is to be introduced, should there be different processes for dealing with differing types of complaints, namely:
 - Member against Member;
 - officer against Member; and
 - member of the public against Member?
 - a. If yes, how should these processes differ?
3. Should the Council have a separate 'Standards Committee' (or another name) to carry out any of the above functions, or instead give the function to an existing committee exercising Council functions?
 - a. If an existing committee is preferred, which committee would be the most appropriate?
 - b. Alternatively, would the Council prefer to delegate some of these functions to an officer?
4. Would there be any value in retaining the facility to have a co-opted independent member(s)² on any committee dealing with complaints of member misconduct and if so, might those co-opted members have a role in chairing consideration of complaints against Members under any of the options shown in Question 2 above?
5. Is there an appetite for having a regional Standards Committee?

¹ At the least the Council would need to remove the reference to the General Principles which will be revoked, and the requirements regarding the registration and declaration of interests as these will be covered in separate Regulations.

² The position of Independent Member as it currently stands will be abolished, but the Council could choose to co-opt someone onto the committee to fulfil a similar function.

Background information

1.0 Consequences of the Bill for the existing ethical framework

- 1.1 Schedule 4 of the Localism Bill repeals Part III of the Local Government Act 2000 in relation to local authorities in England. This means the abolition of Standards for England, standards committees, and the jurisdiction of the First-Tier Tribunal (Local Government Standards in England). The model code of conduct and the general principles of public life will be repealed, and the power for the Secretary of State to issue a model code of conduct and to specify general principles is removed altogether. There will be no requirement for Councils to have a standards committee in future and the position of Independent Member is also abolished.
- 1.2 All the provisions which relate to local assessment and review, and the powers of Monitoring Officers in relation investigations are also repealed.
- 1.3 Finally, there will be no requirement for each Member to formally agree to abide by the Code of Conduct through their acceptance of office, and any declaration previously made will cease to apply when the Code of Conduct is abolished. Currently, failure to complete such a declaration within two months of their election means that a Member loses their position on the Council.

2.0 Future standards regime - Proposals contained in the Bill

- 2.1 For the purposes of Chapter 5 of the Bill (which contains all the provisions about standards), a Parish or Town Council is included in the definition of a 'relevant authority'. This means that instead of the Council being responsible for the Parish and Town Councils in its area, these Councils must make their own arrangements. This will include adopting their own voluntary code of conduct (if they choose to do so), and considering and investigating written allegations of misconduct (if applicable).

Duty to promote and maintain high standards of conduct

- 2.2 The Localism Bill imposes a new duty on local authorities to promote and maintain high standards of conduct by Members and co-opted members of the authority. There are no further details regarding how this duty is to be fulfilled or what it will entail.

Voluntary codes of conduct

- 2.3 The Localism Bill allows local authorities to adopt a code of conduct to apply to Councillors and co-opted members whilst they are acting in that capacity. The Council can choose to:
- (a) Revise the existing code of conduct;
 - (b) Adopt a code of conduct to replace the existing code of conduct; or
 - (c) Withdraw its existing code of conduct without replacing it.

- 2.4 The Council may publicise its adoption, revision or withdrawal of a code of conduct in whatever manner it considers appropriate.
- 2.5 If the Council does choose to continue to have a code of conduct in place, either by amending or replacing the existing one, then it must consider whether to investigate written allegations that a Member or co-opted member has failed or may have failed to comply with its code of conduct. If the Council decides that investigation is appropriate, it must investigate the allegation in such a manner as it thinks fit.
- 2.6 It is worth noting that during such an investigation Members would not be able to rely on the Local Authorities (Indemnities for Members and Officers) Order 2004 in order to provide insurance payments towards the cost of legal fees in their defence. This is because this Order specifies that Members can be indemnified against the costs of defending themselves if proceedings are brought against them in accordance with Part III of the Local Government Act 2000, but this will be repealed.
- 2.7 If, as a result of the investigation or otherwise, the Council finds that a Member or co-opted member has failed to comply with the code of conduct, it may have regard to the failure in deciding:
- (a) Whether to take action in relation to the Member or co-opted member; and
 - (b) What action to take.
- 2.8 There are no further details of what actions may be appropriate, although it is clear there will be no powers to suspend, partially suspend or disqualify a Member. The judgement of the Court of Appeal in *R v Broadland District Council ex p Lashley (2000)* confirmed the right of an authority to take administrative measures to ensure that it could continue to discharge its functions effectively, in that case by the Chief Executive barring a Councillor from the offices and from direct contact with individual officers. However, it is not a power to punish, and cannot be exercised in a manner which prevents a Councillor acting as a Councillor.
- 2.9 The Localism Bill specifies that the above functions of considering, investigating and taking action in relation to complaints, 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.
- 2.10 The Local Government Act 1972 s101 allows two or more Councils to set up a joint committee to carry out their functions. It would therefore be possible to create a joint standards committee³ for the West Yorkshire authorities. This would require the councils reaching agreement over the content of a voluntary code of conduct, the terms of reference, and the composition of the standards committee.

³ This would not have the statutory functions or membership requirements of current standards committees as these legislative requirements are abolished by the Localism Bill.

Disclosure and registration of Members' interests

- 2.11 Section 17 of the Bill allows the Secretary of State to make regulations which will require the Monitoring Officer of a relevant authority (or other specified officer in relation to Parish or Town Councils) to establish and maintain a register of interests of the Members and co-opted members of the authority.
- 2.12 The regulations may:
- Specify the financial and other interests that are to be included in the register;
 - Require any Member or co-opted member who has an interest of a specified kind to disclose that interest before taking part in business of the authority relating to the interest;
 - Prevent or restrict the participation of a Member or co-opted member in any business of the authority to which their interest relates;
 - Make provisions for the Council to grant dispensations in specified circumstances;
 - Make provisions about the sanctions that a relevant authority may impose of a Member or co-opted member for failure to comply with regulations under this section⁴; and
 - Require a relevant authority to make copies of the register available to the public and to inform the public that copies are available.
- 2.13 The sanctions to be specified within the regulations will not include suspension, partial suspension or disqualification.

Offence of breaching the regulations under section 17

- 2.14 The Localism Bill makes it an offence to fail, without reasonable excuse, to comply with obligations in the regulations referred to above. The penalty that the magistrates court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a Member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the Crown Prosecution Service having the evidence to warrant prosecution, but no proceedings may be brought more than three years after the offence or the last date on which an offence was committed.

3.0 Predetermination

- 3.1 Chapter 4 of the Bill clarifies the existing position regarding predisposition, bias and predetermination. According to common law, predetermination occurs when someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. Councillors who have participated in decision making whilst having a predetermined view have caused the decision to be judged unsafe and to be quashed.

⁴ This implies that the Council will also have jurisdiction over breaches of the Regulations, but it is unclear how this will work in practice as the Bill makes such breaches a criminal offence.

- 3.2 The Localism Bill clarifies that if a Councillor has given a view on an issue, this does not show that the Councillor has a closed mind on that issue, so that if a Councillor has campaigned on an issue or made public statements about their approach to an item of Council business, he or she will be able to participate in the discussion of that issue in the Council and to vote on it if it arises as an item of Council business requiring a decision. The effect of this provision is that campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an accusation that the Member has a closed mind.
- 3.3 However, in practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the Councillor is so committed that they are not even prepared to listen to the evidence (e.g. by making statements such as “over my dead body...”). Therefore this clarification would not change the Council’s current approach to these matters.
- 3.4 Although bias and predetermination are not part of the current Code of Conduct regime, Standards for England have advised that a Councillor who chooses to take part in a decision when they are biased may bring their office or authority into disrepute.

4.0 Recall of Elected Representatives

- 4.1 Under the Recall of Elected Representatives Bill it is proposed that Elected Mayors and Parish Councillors will also be subject to electoral recall⁵. This provides that if 10% or more of the registered voters in the constituency of an elected representative sign a relevant recall petition then a recall election must be held within 4 months.
- 4.2 In order for a recall petition to be relevant the appropriate Returning Officer must be satisfied that there is evidence⁶ in the petition that the elected representative has:
- Acted in a way which is financially dishonest or disreputable;
 - Intentionally misled the body to which he or she was elected;
 - Broken any promises made by him or her in an election address;
 - Behaved in a way that is likely to bring his or her office into disrepute; or
 - Loss of confidence of his or her electorate.
- 4.3 If the recall election result is negative for the Member concerned, a by-election must be held within the following three months, although the recalled Member may stand as a candidate in this election.

⁵ This Bill as drafted also applies to MPs and MEPs, but not to Local Authority Councillors. It is unclear why this is the case, and possible that this may change. This Bill is due to have its second reading on 10th June 2011, so further details may be available after this date.

⁶ It is unclear how the petitioners will be able to obtain such evidence (i.e. will the Council have any powers to investigate on their behalf?). It is also unclear how much evidence will be required in order to satisfy the Returning Officer.