

## COUNCIL – 27TH FEBRUARY 2012

### Report of the Standards Committee

#### ITEM 6.5 NEW STANDARDS ARRANGEMENTS – APPOINTMENT OF INDEPENDENT PERSONS

##### Purpose of Report

To consider a recommendation of Standards Committee, concerning the implementation of the arrangements in the Localism Act 2011 relating to the new standards regime and seeking approval for the process of appointing Independent Persons and to extend the terms of office of existing Independent and Parish Members.

##### Recommendations

1. That the legal advice that current and recent Independent Members of standards committees are excluded from being appointed as Independent Persons be noted and that as a consequence the proposed arrangements for the pooling of approximately 6 to 10 Independent Persons across Leicester, Leicestershire and Rutland, appointed by each participating authority (subject to eligibility) on the basis of recommendations by a small, representative group of Monitoring Officers, be supported; and
2. that the terms of office of Mrs Betty Crick (Parish Member), Mr Toby Griffiths (Parish Member) and Mr Philip Tomlinson (Independent Member) be extended to the end of the 2012/13 Council Year or until the statutory role of the Standards Committee comes to an end, whichever is the sooner.

##### Reasons

1. To enable appropriate arrangements for the appointment of Independent Persons to be put in place which make use of the knowledge and experience of current and recent Independent Members.
2. To enable the membership of the Committee to continue until its statutory role concludes and avoid the need to advertise vacancies for posts that would be of very short duration.

##### Policy Justification and Previous Decisions

Policy Justifications are as detailed within the report attached as an Appendix.

At its meeting on 13th February 2012, the Standards Committee considered a report on the implementation of the arrangements in the Localism Act 2011 relating to the new standards regime and seeking approval for working in partnership with neighbouring authorities to develop those arrangements.

The Standards Committee resolved that:

1. that the progress of the bringing into force of the provisions in the Localism Act 2011 relating to the new standards regime and the current indication that they will be brought fully into force on 1st July 2012 be noted;
2. that it be **recommended to Council** that the legal advice that current and recent Independent Members of standards committees are excluded from being appointed as Independent Persons be noted and that as a consequence the proposed arrangements for the pooling of approximately 6 to 10 Independent Persons across Leicester, Leicestershire and Rutland, appointed by each participating authority (subject to eligibility) on the basis of recommendations by a small, representative group of Monitoring Officers, be supported;
3. that officers continue to work with the Leicester, Leicestershire and Rutland group of the Association of Council Secretaries and Solicitors to develop a common set of standards arrangements;
4. that officers investigate the possibility of including parish and town council and independent members in any new standards arrangements;
5. that officers investigate the possibility of simplifying the proposed investigation and determination process;
6. that the Committee consider the national model code being developed by the Association of Council Secretaries and Solicitors and the Local Government Association when it is available as a potential code of conduct for the Borough Council to adopt;
7. that it be **recommended to Council** that the terms of office of Mrs Betty Crick (Parish Member), Mr Toby Griffiths (Parish Member) and Mr Philip Tomlinson (Independent Member) be extended to the end of the 2012/13 Council Year or until the statutory role of the Standards Committee comes to an end, whichever is the sooner.

#### Reasons

1. To keep the Committee informed about the changes to the standards regime.
2. To enable appropriate arrangements for the appointment of Independent Persons to be put in place which make use of the knowledge and experience of current and recent Independent Members.
3. To ensure that the views of parish and town councils are adequately represented under the new regime.
4. To allow a more efficient decision making process with appropriate safeguards in place.
5. To make use of the benefits of joint working in both developing and implementing the new standards arrangements.

6. To facilitate joint working and make use of the expertise that is being applied to the development of a model code.
7. To enable the membership of the Committee to continue until its statutory role concludes and avoid the need to advertise vacancies for posts that would be of very short duration.

#### Report Implications and Risk

Report Implications and Risks are as detailed within the report attached as an Appendix.

Background Papers: No additional background papers.

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**STANDARDS COMMITTEE – 13TH FEBRUARY 2012**

**Report of the Monitoring Officer**

**ITEM 4      IMPLEMENTATION OF NEW STANDARDS ARRANGEMENTS**

Purpose of Report

To provide the Committee with an update on the implementation of the arrangements in the Localism Act 2011 relating to the new standards regime and seek approval for working in partnership with neighbouring authorities to develop those arrangements.

Recommendations

1. That the progress of the bringing into force of the provisions in the Localism Act 2011 relating to the new standards regime and the current indication that they will be brought fully into force on 1st July 2012 be noted.
2. That it be **recommended to Council** that the legal advice that current and recent Independent Members of standards committees are excluded from being appointed as Independent Persons be noted and that as a consequence the proposed arrangements for the pooling of approximately 6 to 10 Independent Persons across Leicester, Leicestershire and Rutland, appointed by each participating authority (subject to eligibility) on the basis of recommendations by a small, representative group of Monitoring Officers, be supported.
3. That officers continue to work with the Leicester, Leicestershire and Rutland group of the Association of Council Secretaries and Solicitors to develop a common set of standards arrangements.
4. That the Committee consider the national model code being developed by the Association of Council Secretaries and Solicitors and the Local Government Association when it is available as a potential code of conduct for the Borough Council to adopt.
5. That it be **recommended to Council** that the terms of office of Mrs Betty Crick (Parish Member), Mr Toby Griffiths (Parish Member) and Mr Philip Tomlinson (Independent Member) be extended to the end of the end of the 2012/13 Council Year or until the statutory role of the Standards Committee comes to an end, whichever is the sooner.

## Reasons

1. To keep the Committee informed about the changes to the standards regime.
2. To enable appropriate arrangements for the appointment of Independent Persons to be put in place which make use of the knowledge and experience of current and recent Independent Members.
3. To make use of the benefits of joint working in both developing and implementing the new standards arrangements.
4. To facilitate joint working and make use of the expertise that is being applied to the development of a model code.
5. To enable the membership of the Committee to continue until its statutory role concludes and avoid the need to advertise vacancies for posts that would be of very short duration.

## Policy Justification and Previous Decisions

The Localism Act 2011 received Royal Assent on 15th November 2011. Once brought into force the provisions in Chapter 7 of the Act will dismantle the ethical standards framework established by the Local Government Act 2000 in England. Once in force, the Act will:

- place a duty on the Council to ensure that members and co-opted members maintain high standards of conduct;
- require the Council to adopt a code of conduct which is consistent with the Nolan Principles for standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership);
- require the Council to put in place arrangements for investigating and taking decisions on complaints relating to Borough Councillors and parish and town councillors in the Borough.

The Committee has received regular reports on the progress of the Localism Bill and its enactment, most recently at its last meeting on 12th December 2012. At that meeting it was agreed that this additional meeting should be held in order to consider proposals for implementing the new standards regime (minute 12 refers).

## Implementation Timetable including Future Decisions

Following the Localism Act receiving Royal Assent, the Government indicated that the timetable for the implementation of the new standards arrangements would be that the role of Standards for England in the current arrangements would cease at the end of January 2012 and that the new arrangements would come into force at the beginning of April 2012. The end of Standards for England's role on 31st January 2012 was brought

into effect by the Localism Act 2011 (Commencement No. 2 and Transitional and Saving Provision) Order 2012. The Government has however been persuaded that bringing into force the remaining provisions in April would leave insufficient time for councils to put in place the new arrangements. The Government therefore wrote to the Association of Council Secretaries and Solicitors stating that “remaining local elements of the current regime, including statutory standards committees with the power to suspend councillors, will be abolished on 1 July 2012.”

The Council must adopt a new code of conduct so that it could come into effect on 1st July. In addition, Council would have to agree the changes to the Constitution required to implement the new standards arrangements and the appointment of Independent Persons. Meetings of the Council are currently programmed for 23rd April, 14th May (Annual Council) and 25th June 2012.

### Report Implications

The following implications have been identified for this report.

#### *Financial Implications*

Should the proposal for a pool of Independent Persons remunerated on an expenses only basis be adopted, the basis for the remuneration of Independent Members/Independent Persons would change. Independent Members currently receive a basic allowance of £239 per year and may also claim expenses. Under the new arrangements expenses claims may be higher if Independent Persons from outside the Borough need to travel to Charnwood as part of their role. However this would be met by the saving from the ending of the basic allowance and contained within existing budgets.

#### *Risk Management*

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below.

| Risk Identified  | Likelihood | Impact   | Risk Management Actions Planned   |
|--|------------|----------|---|
| Failure to have in place appropriate Standards arrangements by the implementation date | Unlikely   | Moderate | Officers will continue to work with colleagues in Leicester, Leicestershire and Rutland to develop the new arrangements.<br>The new arrangements will be on the agenda for the next liaison meeting with Parish/Town Council Clerks.<br>The likelihood of this risk has diminished as a result of the delay in the implementation date by the Government. |

*Equality and Diversity*

An equalities impact assessment will be prepared alongside the development of the new standards arrangements.

Background Papers: [Localism Act and Explanatory Notes](#)  
[Standards Regime Implementation Timetable – Association of Council Secretaries and Solicitors Press Release](#)  
[Sanctions and Independent Persons – Association of Council Secretaries and Solicitors Press Release](#)

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## Part B

### Work to develop code of conduct and standards arrangements

1. The Association of Council Secretaries and Solicitors (ACSeS) and the Local Government Association are working on a model code of conduct. Work on the code of conduct is dependent on regulations to be issued by the Secretary of State covering the registration and disclosure of interests.
2. In addition, since the last meeting of the Committee officers have been working with colleagues at other authorities in Leicester, Leicestershire and Rutland to develop a common approach to implementing the new standards arrangements. The areas in which collaboration could usefully take place were explored at a meeting of the Leicester, Leicestershire and Rutland group of ACSeS on 13th January 2012. The group identified 3 main areas for collaboration which are detailed below.

#### *A common code of conduct*

3. It was felt that a common code would be essential for collaboration to work so that any efficiencies from shared Independent Persons and similar processes could be realised. This would be particularly the case with defining which interests, other than disclosable pecuniary interests as defined in the forthcoming regulations, should be included within the code. It was felt that the national model code being developed would be a useful starting point for developing a common code throughout Leicester, Leicestershire and Rutland.

#### *Recruitment of Independent Persons (IPs)*

4. Given the fact that IPs can only be appointed following an advertisement it was felt that it would be more efficient to do this collaboratively with savings in time and costs. It was suggested that perhaps between 6 and 10 IPs could be recruited (on an expenses basis only) and appointed by each participating authority (subject to eligibility). It was felt that a small, representative group of Monitoring Officers could undertake the selection process. A Member selection panel could be possible but given the potential number of participating authorities may be a little unwieldy.

#### *Investigation and Determination Processes*

5. It was recognised by the group that it was important to balance the need to deal with allegations promptly and without undue delay with the need to ensure natural justice for the member concerned. It was also felt that a much simpler set of processes was desirable. Initial thoughts have centred around:
  - (i) Initial fact finding by the Monitoring Officer to see if the member has a case to answer and to make an appropriate recommendation in consultation with the allocated IP. This function could in appropriate circumstances, where someone

- independent was required, be delegated to a Monitoring Officer from another authority.
- (ii) The fact finding report would be considered by a committee or sub-committee of the responsible authority (i.e. the Borough Council for Borough Councillors and parish and town councillors in the Borough) with delegated authority to determine whether or not the member has a case to answer. Where there is no case to answer that would be the end of the matter.
  - (iii) Where there is a case to answer the committee or sub-committee can determine an investigation is warranted and would, once the investigation is concluded, determine the matter (with the benefit of the advice of the allocated IP) and impose any necessary sanction.
  - (iv) The member would have a right of appeal against the sanction to either an appeals committee of the authority or reciprocal arrangements could be in place with another authority to hear the appeal.
  - (v) There was further discussion regarding appeals by a complainant where a decision is taken not to investigate a matter.

### Sanctions

6. ACSeS have sought counsel's opinion regarding the range of sanctions that could be applied under the new standards arrangements. Counsel's opinion was that these would be:
  - a formal letter to the councillor found to have breached the code;
  - formal censure;
  - removal by the authority of the member from committee(s) and other appointments subject to statutory requirements in respect of political balance;
  - a press release and other appropriate publicity.
7. The Local Government Act 1989 and associated regulations set out that, with certain exceptions, appointments to committees by principal councils must reflect the political balance of members of the council. As a result, although appointments are formally made by the council they are made on the basis of the recommendations by the political groups on that council. Counsel's opinion was that, in those circumstances, the sanction could only be to recommend to a political group that a change be made to its recommendations.

### Membership of the Committee

8. At the last meeting it was reported that the terms of the Localism Act appeared to exclude current and former Independent Members of the Committee, but not Independent Members of other authorities, from being appointed as IPs. This view has been confirmed by counsel's opinion obtained by ACSeS. As a result the suggestion for a county-wide recruitment described above has been put forward as a means of enabling those current and former Independent Members who wish to do so to be able to apply for the new IP positions and for their knowledge and experience not to be lost.

9. It would be possible for the Council to continue to co-opt Independent and Parish Members to a non-statutory standards committee. However such members would not have the statutory right to vote that current members do.
  
10. The terms of office of three members of the Committee, Betty Crick, Toby Griffiths and Philip Tomlinson are due to finish at the end of the 2011/12 Council Year. Given the current intention of the Government for the statutory role of the Committee to continue until 1st July 2012, if the vacancies were advertised the appointments would only last for 6 weeks. It is, therefore, recommended that their terms of office are extended.

