

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

9 FEBRUARY 2012

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

Corporate Management and Finance – Lead Cabinet Member – Councillor Harrington

LOCALISM ACT 2011 – THE NEW STANDARDS REGIME

1. Summary

The report provides details of the new standards provisions to be introduced by the Localism Act, and in response sets out initial proposals for consideration.

2. Recommendations

It is recommended that:-

1. The new code of conduct to be drafted by the Monitoring Officer is based on the ten principles of conduct (as specified in the Relevant Authorities (General Principles Order 2001); and subject to this that it includes provisions equivalent to paragraphs 3 to 7 of the Council's current code; and that it should require registration and disclosure of interests which would constitute personal and/or prejudicial interests under the current code, but withdrawal from the meeting room as required by the Localism Act only in relation to disclosable pecuniary interests.

(paragraph 11 of the report refers)

2. When the disclosable pecuniary interests regulations are published, the draft code is reviewed by the Monitoring Officer and appropriate provisions are included regarding the registration and disclosure of such interests and also of interests other than disclosable pecuniary interests.

(paragraph 11 of the report refers)

3. The Monitoring Officer (or authorised representative) is given delegated authority to receive complaints about member conduct under the Council's new code of conduct and under the codes of conduct adopted by the Borough's Town and Parish Councils.

(paragraph 12 onwards of the report refers).

4. The Monitoring Officer (or authorised representative) be given delegated power, in consultation with an independent person, to decide whether or not to take any action on a complaint, including the power to take no action; to seek to resolve a matter informally and to arrange an investigation; and that he is given discretion to refer a decision on whether or not to investigate a complaint to the standards panel.

(paragraph 15 of the report refers)

5. Where an investigation finds no evidence of failure to comply with the code, the Monitoring Officer (or authorised representative) is given delegated authority, in consultation with an independent person, to close the matter, but with discretion to refer such a decision to the standards panel.

(paragraph 16 of the report refers)

6. Where an investigation finds evidence of a failure to comply with the code, the Monitoring Officer (or authorised representative), in consultation with an independent person, is given delegated authority to seek a local resolution of the matter to the complainant's satisfaction, where appropriate, and where not appropriate or possible, to refer the investigation findings to the standards panel.

(paragraph 17 of the report refers)

7. A politically balanced list of ten members be established, from which a standards panel of three members could be drawn in order to hear complaints about member conduct where an investigation finds evidence of failure to comply with the code of conduct.

(paragraph 18 of the report refers)

8. The standards panel is given delegated authority to take decisions in consultation with an independent person, in cases where a member is found as a result of a hearing to have failed to comply with the code of conduct, such decisions to include one or more of the actions specified at paragraph 19 of the report as considered appropriate.

(paragraph 19 of the report refers)

9. It be noted that there will be no local authority appeal mechanism regarding decisions of the standards panel.

(paragraph 20 of the report refers)

10. Written procedures be developed by the Monitoring Officer regarding the arrangements outlined in recommendations 3 to 9 inclusively.

(paragraphs 15 and 18 of the report in particular refer)

11. Vacancies for one independent person ("IP") and two reserve IPs be advertised publicly and that the terms of reference of the current Standards Appointments Panel be revised to enable the Panel to shortlist (if considered necessary by the Monitoring Officer in consultation with the Chair of the

Panel) and to interview candidates with a view to recommending appointments to Council.

(paragraph 21 of the report refers)

12. The initial remuneration for the IPs be set at £650 per annum, with travel and subsistence being payable at member rates, with this being reviewed after 12 months of operation by the Standards Appointment Panel which would then make recommendations to Council regarding the future remuneration of IPs.

(paragraph 23 of the report refers)

13. The Monitoring Officer:-

- prepares and maintains a new register of members interests for the Council, as required by the Localism Act and the code of conduct when adopted;
- ensures that the register is available for inspection and on the Council's website;
- provides guidance to all members on their duty to register interests;
- prepares and maintains new registers of members' interests for each Town and Parish Council within Stockton Borough, as required by the Localism Act and each code of conduct adopted by the Town and Parish Councils;
- ensures that each register is available for inspection and on the Borough Council's website, and that each Town and Parish Council with a website is provided with the information necessary to enable them to put their register on their own website;
- provides guidance to Town and Parish Clerks on the new registration requirements.

(paragraph 24 to 28 of the report refers)

14. The Monitoring Officer amends Council, Cabinet and Executive Scrutiny and Select Committee procedure rules to provide that a member must leave the meeting room during the whole consideration of any item of business in which the member has a disclosable pecuniary interest, except where the member is permitted to remain as a result of the grant of a dispensation.

(paragraphs 29 to 32 of the report refers)

15. The arrangements and procedure relating to a member's sensitive interests be noted.

(paragraphs 33 to 35 of the report refer)

16. The Monitoring Officer be given delegated authority to grant dispensations in consultation with an independent person, but with the discretion to refer any request for determination by the Standards panel in consultation with an

independent person, and that the standards panel is also given delegated authority to consider appeals against a refusal to grant a dispensation, again in consultation with an independent person.

(paragraphs 36 to 40 of the report refer)

17. The Council's standards arrangements are reviewed by the Monitoring Officer after 12 months of operation, and the outcome with any recommendations for change is reported to Cabinet and Council for further consideration.

(paragraph 41 of the report refers)

18. In addition to guidance to Members on their duty to register interests, appropriate training be provided to members regarding the Council's new code of conduct, disclosable pecuniary interests and the arrangements for dealing with misconduct allegations.

(paragraph 42 of the report refers).

3. Reasons for the Recommendations/Decision(s)

To ensure that the Council has appropriate arrangements in place to satisfy the requirements of the Localism Act 2011 and, in particular, to ensure that the Authority satisfies its duty to promote and maintain high standards of conduct by members and voting co-opted members.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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SUMMARY

The report provides details of the new standards provisions to be introduced by the Localism Act, and in response sets out initial proposals for consideration.

RECOMMENDATIONS

It is recommended that:-

1. The new code of conduct to be drafted by the Monitoring Officer is based on the ten principles of conduct (as specified in the Relevant Authorities (General Principles Order 2001); and subject to this that it includes provisions equivalent to paragraphs 3 to 7 of the Council's current code; and that it should require registration and disclosure of interests which would constitute personal and/or prejudicial interests under the current code, but withdrawal from the meeting room as required by the Localism Act only in relation to disclosable pecuniary interests.

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(paragraph 12 onwards of the report refers).

4. The Monitoring Officer (or authorised representative) be given delegated power, in consultation with an independent person, to decide whether or not to take any action on a complaint, including the power to take no action; to seek to resolve a matter informally and to arrange an investigation; and that he is given discretion to refer a decision on whether or not to investigate a complaint to the standards panel.

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8. The standards panel is given delegated authority to take decisions in consultation with an independent person, in cases where a member is found as a result of a hearing to have failed to comply with the code of conduct, such decisions to include one or more of the actions specified at paragraph 19 of the report as considered appropriate.

(paragraph 19 of the report refers)

9. It be noted that there will be no local authority appeal mechanism regarding decisions of the standards panel.

(paragraph 20 of the report refers)

10. Written procedures be developed by the Monitoring Officer regarding the arrangements outlined in recommendations 3 to 9 inclusively.

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11. Vacancies for one independent person ("IP") and two reserve IPs be advertised publicly and that the terms of reference of the current Standards Appointments Panel be revised to enable the Panel to shortlist (if considered necessary by the Monitoring Officer in consultation with the Chair of the Panel) and to interview candidates with a view to recommending appointments to Council.

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12. The initial remuneration for the IPs be set at £650 per annum, with travel and subsistence being payable at member rates, with this being reviewed after 12 months of operation by the Standards Appointment Panel which would then make recommendations to Council regarding the future remuneration of IPs.

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- ensures that the register is available for inspection and on the Council's website;
- provides guidance to all members on their duty to register interests;
- prepares and maintains new registers of members' interests for each Town and Parish Council within Stockton Borough, as required by the Localism Act and each code of conduct adopted by the Town and Parish Councils;
- ensures that each register is available for inspection and on the Borough Council's website, and that each Town and Parish Council with a website is provided with the information necessary to enable them to put their register on their own website;
- provides guidance to Town and Parish Clerks on the new registration requirements.

(paragraph 24 to 28 of the report refers)

14. The Monitoring Officer amends Council, Cabinet and Executive Scrutiny and Select Committee procedure rules to provide that a member must leave the meeting room during the whole consideration of any item of business in which the member has a disclosable pecuniary interest, except where the member is permitted to remain as a result of the grant of a dispensation.

(paragraphs 29 to 32 of the report refers)

15. The arrangements and procedure relating to a member's sensitive interests be noted.

(paragraphs 33 to 35 of the report refer)

16. The Monitoring Officer be given delegated authority to grant dispensations in consultation with an independent person, but with the discretion to refer any request for determination by the Standards panel in consultation with an independent person, and that the standards panel is also given delegated authority to consider appeals against a refusal to grant a dispensation, again in consultation with an independent person.

(paragraphs 36 to 40 of the report refer)

17. The Council's standards arrangements are reviewed by the Monitoring Officer after 12 months of operation, and the outcome with any recommendations for change is reported to Cabinet and Council for further consideration.

(paragraph 41 of the report refers)

18. In addition to guidance to members on their duty to register interests, appropriate training be provided to Members regarding the Council's new code of conduct, disclosable pecuniary interests, and the arrangements for dealing with misconduct allegations.

(paragraph 42 of the report refers)

DETAIL

1. The Localism Act received Royal Assent on 15 November 2011.
2. Amongst many other matters, it introduced new provisions about how the conduct of local authority members and voting co-opted members is to be regulated.
3. In essence the Local Government Act 2000 standards provisions are to be abolished (in England, but not Wales) and the pre 2000 conduct regime re-introduced.

Key Points

4. The key points of the new provisions are as follows:-
 - The provisions relating to the abolition of the Standards Board regime have been enacted and all the current legislation will be repealed by means of commencement orders in due course.
 - There will be a new general duty to promote and maintain high standards of conduct by members and voting co-opted members.
 - Each “relevant authority” must adopt a code which deals with the conduct expected of members and voting co-opted members when acting in that capacity. It must be consistent with a new set of general principles and the rest of the new legislation, but there will be no national model. A code will need to include provisions about members’ interests, but most of the content will be for each authority to decide.
 - Regulations will define “disclosable pecuniary interests” of members and spouse/partners. The monitoring officer will keep and publish a register of these as before, but the details of the duty to notify are different. Members will have to make an oral disclosure at meetings if their interest has not been registered. As before, sensitive information can be kept private if there is a risk of violence or intimidation.
 - A member with an interest of this kind in a matter must not participate in any discussion of, or vote on, the matter at the meeting. Standing orders may require the member to leave the meeting. There is a similar rule for individual member decisions.
 - It is a criminal offence to fail to notify the monitoring officer of an interest of this kind, or to participate in a meeting or take a decision without reasonable excuse. It is also an offence knowingly or recklessly to provide false or misleading information in that respect. Only the DPP can authorise prosecutions, and there are time limits.
 - The authority can, however, grant dispensations permitting participation. The grounds for so doing are much wider than before.
 - Authorities must have in place “arrangements” under which allegations of breaches of the code can be investigated and decisions on allegations can be

taken, with or without an investigation or a hearing. This could, but need not, include some kind of standard committee. This would have to be a politically balanced Committee and could not contain any voting independent members or parish representatives, as the present Standards Committee does. However, there will be few sanctions available apart from, for example, censure and withdrawal of facilities. Removal of a member from a committee or sub-committee is another possible sanction, but would require a Group Leader's continuing support and removal of a member from Cabinet could only take place through a Leader's decision.

- Authorities must appoint at least one "independent person" (IP). They must consult the IP after an investigation, and may consult the IP on other complaints. A member about whom an allegation has been made can also consult the IP. The IP cannot be, or have been in the last five years, a member, co-opted member or officer of the authority. There is currently uncertainty about whether this rules out current Standards Committee independent members.
- All of this applies to parish councils, with modifications, except that their principal authorities will make and operate the "arrangements" for them and they will use the principal authority's IP. They will, however, make the final decisions in relation to complaints.
- The main differences to the present system are the absence of any national coordination or consistency, and the lack of any express controls over disrespect, bullying, intimidation, misuse of position or resources or breach of confidentiality, underlined by the omission of "respect" and "stewardship" from the new list of principles. An authority's code may cover these issues, but this is optional.
- The Government hopes the legislation will take effect in April 2012 but the Regulations about disclosable pecuniary interests have not yet been published. There will be transitional arrangements for existing casework.

5. A more detailed synopsis is attached at the **Appendix** to the report.

A Response to the New Standards Regime Proposals

6. The following is suggested as an initial response to the new proposals.

The Code of Conduct

7. The current ten General Principles and Model Code of Conduct are to be repealed and Members will no longer be required to give an undertaking to comply with the Code of Conduct.
8. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in that capacity. The Code must (as a minimum) be consistent with the seven (Nolan) principles of public life.
9. The Code will also have to include provisions about the registration and disclosure of pecuniary and non-pecuniary interests. Regulations are to be issued regarding certain pecuniary interests, defined as "disclosable pecuniary interests". Accordingly at the moment, it is not possible to draft a complete code for Members' consideration.

10. In the meantime, however, Cabinet and Council is asked to consider the key basics for the Council's new Code of Conduct, in order to inform the preparation of a draft for further consideration.
11. The following is suggested:-
 - Rather than the seven (Nolan) Principles, the Code should be based on the current ten principles of conduct (as provided to Members following the 2011 local elections).
 - If that is agreed, the Code should include provisions equivalent to paragraphs 3 to 7 of the Council's current code (treating others with respect, confidentiality and not bringing the office or authority into disrepute).
 - The code should require disclosure and registration of interests which would constitute personal and/or prejudicial interests under the current code, but withdrawal from the meeting room as required by the Localism Act only in relation to disclosable pecuniary interests.

Arrangements for dealing with Misconduct Complaints

12. The Council must establish arrangements for dealing with complaints about breaches of the Code of Conduct as regards both Borough and Town/Parish Council Members. Other than the requirement for at least one independent person (as defined in the Localism Act), the arrangements can be such as the Council considers reasonable and appropriate.
13. There is no requirement for any Standards Committee or Sub-Committee to be involved as at present.
14. Given the absence of any of the currently available statutory sanctions, the following "light touch" approach is suggested.

Initial decision on a Complaint

15. The current Standards for England guidance on the initial assessment of complaints in order to filter out inappropriate (e.g. trivial) ones, could be adopted for the new arrangements. An Officer (i.e. Monitoring Officer or authorised representative), in consultation with an independent person, could decide whether or not to take any action on the complaint (e.g. to try and resolve it informally or to investigate it). There could also be the option to refer a matter (e.g. where a particularly sensitive issue is involved) to the Member panel ("the standards panel") referred to below.

Investigation and no breach

16. An Officer would investigate, as currently. If there was a finding of no breach, the decision whether or not to accept this and to take no further action could be delegated to the Monitoring Officer or authorised representative, in consultation with an independent person, but with the option again to refer a matter to the standards panel if considered appropriate.

Investigating and finding of breach

17. The Monitoring Officer, or authorised representative, in consultation with an independent person, could be empowered to try to resolve such a matter, in order to avoid the need for a hearing. It would be for the Monitoring Officer or authorised representative to agree the local resolution of the matter, subject however to the complainant being in agreement.
18. In other cases, a panel of three elected members, drawn from a politically balanced list of ten members, could be established to carry out a hearing of the matter. The current procedures for dealing with such cases could be updated for that purpose. The member panel would decide, having taken advice from an independent person whether there had been a breach of the code and what, if any action should be taken.

Action in response to a finding of breach of the Code

19. The Localism Act does not give the Council any powers to impose sanctions such as suspension or requirements for training or an apology on members. So, the range of actions which the authority can take is limited. Actions might include the following:-
 - Censure;
 - Reporting the findings to full Council or to the Town/Parish Council for information;
 - Recommending to the member's Group Leader (or in the case of un-grouped members, recommending to Council or to a Committee) that the Member be removed from any or all Committees or Sub-Committees of the Council;
 - Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - Instructing the Monitoring Officer to, or recommending that the Town/Parish Council arrange training for the member;
 - Removing, or recommending to the Town/Parish Council that the member be removed from all outside appointments to which the member has been appointed or nominated by the authority or by the Town/Parish Council;
 - Withdrawing or recommending to the Town/Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
 - Excluding or recommending that the Town/Parish Council excludes the member from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings.

Appeals

20. Appeals against Officer/Member decisions will be by way of judicial review to the High Court. There is no other appeal mechanism required or proposed.

Independent Persons ("IP")

21. An IP must be appointed through a process of public advertisement, application and appointment by a majority of the Council's Members. It is suggested that one IP and one or two substitutes, to provide flexibility where there is a conflict of interest or unavailability, be appointed. Applications could be considered by the current Standards Appointment Panel, subject to its terms of reference being changed to cover the new provisions.
22. If possible, the opportunity to apply should be provided to the existing Standards Committee independent members.
23. As regards the remuneration of the IPs, they will not be co-optees and so will not automatically be covered by the existing Members' Allowances Scheme. It is suggested that the initial remuneration be set at the current co-optee allowance rate (£650), with travel and subsistence being payable at member rates. This could then be reviewed after 12 months by the Appointments Panel, which could then make recommendations to Council regarding future remuneration.

Registers of Members' Interests

24. The Localism Act requires the Monitoring Officer to set up and maintain a register of interests for the Borough Council.
25. This will need to encompass the disclosable pecuniary interests specified by regulations, being the interests not only of Members, but also of their spouse, civil partner, or someone living with the member in a similar capacity.
26. In addition, the register will need to include details of other pecuniary and non-pecuniary interests as required by the Council's approved code of conduct.
27. The register will be required to be available for inspection and on the Council's website.
28. The Monitoring Officer will also be responsible for setting up and maintaining a register of interests for each Town or Parish Council in the Authority's administrative area. These must be available for inspection and on the Borough Council's website. Where a Town/Parish Council has a website, the relevant Council has to be provided by the Monitoring Officer with the information necessary to enable it to put its register on its own website.

Disclosure of Interests and Withdrawal from Meetings

29. If a member has a disclosable pecuniary interest in a matter at a meeting of the Council, Cabinet, Committee, Sub-Committee, Joint Committee or Joint Sub-Committee, the member must not:-
 - Participate in any discussion of the matter at the meeting (this would seem to preclude making representations as currently permitted under paragraph 12(2) of the present Code of Conduct); or
 - Participate in any vote on the matter
30. Failure to comply with these requirements will be a criminal offence.

31. There is no specific legislative requirement to leave the meeting room in this situation, however, such a requirement can be introduced by way of standing order (procedure rule).
32. This is considered to be a sensible approach not least to avoid any uncertainty as to whether a member with a disclosable pecuniary interest has complied with the requirement not to participate in any discussion of the matter at the particular meeting.

Sensitive Interests

33. The Localism Act effectively repeats the existing Code of Conduct provisions about Members who consider they have sensitive disclosable or registrable interests.
34. The Monitoring Officer may be requested to agree that a member's interest is sensitive (disclosure at a meeting or in a register could lead to the member or a person connected with them being subject to violence or intimidation).
35. If the Monitoring Officer agrees, the member need only disclose/register the existence of the interest rather than the detail of it.

Dispensations

36. The provisions on dispensations are significantly changed by the Localism Act. At present, a member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds:-
 - That at least half of the members of a decision making body have prejudicial interests.
 - That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.
37. In future a dispensation will be able to be granted in the following circumstances:-
 - That so many members of the decision making body have disclosable pecuniary interests in a matter that it would "impede the transaction of the business".
 - That without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
 - That the authority considers that the dispensation is in the interests of persons living in the authority's area.
 - That, without a dispensation, no member of the Cabinet would be able to participate on the matter; or
 - That the authority considers that it is otherwise appropriate to grant a dispensation.
38. Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

39. The power to grant dispensations can be delegated to a committee, sub-committee or to an officer.
40. It is proposed that the power to grant dispensations is delegated to the Monitoring Officer, in consultation with an independent person, but with discretion for the Monitoring Officer to refer any request to the Standards Panel (who should also consult an independent person), where he considers it appropriate to do so. The panel should also be empowered to hear any appeal against a refusal to grant a dispensation, again in consultation with an independent person.

Review

41. The new arrangements will be monitored carefully and it is recommended that they be reviewed after an initial twelve months of operation. The outcome of the review and any suggested changes could then be reported to Cabinet and Council.

Training

42. In addition to the proposed guidance to members on their duty to register interests under the new standards provisions appropriate training will also need to be provided to members regarding the new code of conduct approved by the Council; the disclosable pecuniary interests to be introduced by regulations and the arrangements which will need to be established for dealing with misconduct allegations under the new code of conduct.

FINANCIAL AND LEGAL IMPLICATIONS

Financial and Legal

43. None specifically as a result of this report. However, the proposed changes to the standards regime will have financial implications for authorities (the absence of a standing committee to deal with standards would generate savings) and the legal landscape relating to member misconduct allegations will change.

RISK ASSESSMENT

44. At this stage, the issues referred to in the report are identified as low risk, given previous experience and the standards framework which continues to operate for the time being. Risk will be reassessed once the Localism Act has been implemented and the new standards framework is in place.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

45. Effective corporate and ethical governance is critical to an authority's performance. Probity and high standards are an inherent part of ethical and hence corporate governance. The Localism Act envisages that notwithstanding the proposals relating to the current standards regime, local authorities will still have a duty to promote and maintain high standards of conduct.

EQUALITY IMPACT ASSESSMENT

46. It is not considered that an assessment is necessary at this stage.

CONSULTATION

47. Developments relating to the standards regime have previously been reported to and discussed with the Standards Committee and with Officers and Members of the Council. This will continue to be the case. The Standards Committee considered the proposed response to the Localism Act standards provisions at its meeting on the 27 January and had no adverse comments to make on the suggested arrangements. The Committee did ask that appropriate indemnity cover be established, if possible, for the Independent Person, given the nature of the role and the potential for claims to be made by aggrieved parties to a misconduct complaint.

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Background Papers None
Ward(s) and Ward Councillors: Not Ward Specific
Property None