



Stockton-on-Tees
BOROUGH COUNCIL

LOCALISM ACT 2011 – THE NEW STANDARDS REGIME

**REVIEW OF THE COUNCIL'S LOCAL STANDARDS
ARRANGEMENTS**

REPORT OF THE MONITORING OFFICER

SEPTEMBER 2013

DRAFT

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1. Introduction

- 1.1 The Localism Act requires principal local authorities to introduce new standards of conduct arrangements. The Council approved Stockton's procedures for dealing with allegations of misconduct, the registration and declaration of members' interests and applications for dispensations in relation to disclosable pecuniary interest on the 7 March 2012 (<http://www.egenda.stockton.gov.uk/aksstockton/users/public/admin/kab12.pl?cmte=COU&meet=83&arc=71>). A new code of conduct for Stockton's members was approved by full Council on the 18 July 2012 (<http://www.egenda.stockton.gov.uk/aksstockton/users/public/admin/kab12.pl?cmte=COU&meet=76&arc=71>).
- 1.2 It was also agreed that the new local standards arrangements, including the code of conduct would be reviewed after twelve months of operation. This report provides details of the outcome of that review. Members, Officers, Independent Persons and Town/Parish Councils (Clerks) have been consulted and their feedback has informed the review.

2. The Code of Conduct

- 2.1 The new Code of Conduct was developed over a period of six months, through extensive consultation with members and officers, by means of correspondence, presentations at informal and formal meetings and one to one and group discussions. Members, in particular, were quite clear that they wanted the new code to be based on the ten general principles of conduct, as opposed to the seven Nolan principles, and to reflect the Council's then existing code, not only as regards general obligations, but in terms of the registration and declaration of interests as well.
- 2.2 The final draft, taking all of these factors into account was approved unanimously by all members at full Council on 18 July last year.
- 2.3 Since then, no specific issues which might necessitate change to the provisions of the Code have been raised by Members, Officers or others regarding the interpretation of those provisions or their practical application, nor have any arisen as a result of the misconduct allegations received since the Code's introduction.
- 2.4 Similarly, there have been no issues nationally which would suggest that the provisions of the Code are not still fit for purpose.
- 2.5 **No changes to the provisions of the Code of Conduct are, therefore, recommended.**
- 2.6 **Appropriate advice, guidance and training in connection with the Code will continue to be provided as and when required.**

3. Principles of Conduct

- 3.1 The Committee on Standards in Public Life has recently announced that it has reviewed and revised the descriptions of the Nolan principles. The original descriptions and the revised versions are attached at the **Annex** to this report.
- 3.2 Although the Council's Code of Conduct does not replicate the Nolan principles exactly, consideration should be given to the descriptions of the principles of conduct included in the Code's preamble, to determine if any of those descriptions should be

updated in light of the revised descriptions to the Nolan principles. There is no requirement to do so, but it may be considered appropriate.

3.3 Consideration be given to whether the descriptions of the principles of conduct in the Council's Code of Conduct should be updated to reflect the revisions to the descriptions of the Nolan principles.

4. Disclosable Pecuniary Interests

4.1 The code of conduct includes appropriate provisions relating to disclosable pecuniary interests as required by the Localism Act.

4.2 Concerns have been expressed nationally in relation to the Act's provisions regarding such interests. Principally, these relate to the nature, extent and application of the categories of interest specified in the legislation. The Act provides that if a Member has a disclosable pecuniary interest, such as ownership of a residential property in the Borough, in a matter which is to be considered at a meeting of the Council or Cabinet, the Member may not participate in any discussion or vote on the matter. Failure to abide by this may lead to criminal proceedings being instituted and criminal sanctions being imposed if an offence is found to be proven.

4.3 It is not clear what the phrase "has a disclosable pecuniary interest in any matter ..." (section 31(1)(b) of the Act) actually means and to what extent a particular interest is, or has to be relevant to the matter being considered. The relationship between the interest and the matter under consideration is, therefore, uncertain.

4.4 This uncertainty, and the fact that criminal liability may arise (however unlikely a possibility this might be), has inevitably led to a cautious approach to the application of the Act's provisions to specific circumstances which may, however remotely or indirectly, involve a Member's disclosable pecuniary interests.

4.5 Government's view is that the legislation is clear enough and that there was never any intention, for instance, that members who are Council Tax Payers due to their beneficial interests in property should be regarded as having a disclosable pecuniary interest in setting the Council Tax.

4.6 There is, however, legal advice to the contrary and a wide range of differing views on the matter.

4.7 From a Tees Valley perspective, the view was taken that in order to avoid the uncertainty and to mitigate any risk of challenge to individual members and to Councils' decisions, dispensations should be provided to members when considering and/or setting the Council Tax or precepts (ie Police and Crime Commissioner and Fire Authority).

4.8 At Stockton, a proportionate approach was taken which did not involve individual applications from each member, and simply required an appropriate report and recommendation to the Monitoring Officer and consultation (by email) with the Authority's Independent Person. The dispensations granted are valid until the next Council elections.

4.9 Whether or not such an approach is required in future, it is not considered that it necessitates any particular changes or additions to the Council's existing standards regime.

5. Arrangements for dealing with Misconduct Complaints

- 5.1 On the one hand, the Committee on Standards in Public Life has expressed concern that “the new, slimmed down (standards) arrangements have yet to prove themselves sufficient for their purpose”.^{*} On the other hand Government’s expressed view is that there is no need for “heavy, bureaucratic” complaint-handling based on the abolished Standards Board regime.
- 5.2 Taking into account the limited sanctions available under the Act, Members agreed that Stockton’s arrangements for dealing with allegations of misconduct should be “light touch”, but with the ability to refer matters to a member panel should that be considered necessary.
- 5.3 As with the code of conduct, the new arrangements were developed through extensive consultation and discussion with Members and Officers, and they were eventually presented to and approved unanimously by full Council on 7 March 2012.
- 5.4 A total of 9 complaints have been received and discussed with the Council’s Independent Person, in accordance with the agreed procedure. Two of these were linked and from the same person.
- 5.5 Details of the complaints and their outcomes are as follows:-

No	Date Received	Subject Matter	Date of Decision	Outcome
1	05/09/2012	Member allegedly making unnecessary enquiries or unfair referrals to Council Officers about the complainant’s activities eg about the building of a porch	25/09/2012	No action regarding the code of conduct allegations considered necessary. Service issues raised referred to the relevant Corporate Director for consideration.
2.	19/09/2012	Allegedly unfair and undemocratic actions of an external organisation’s committee, with which the member was involved, and by some of its members, towards other members eg allegedly being forced to resign from the committee.	20/09/2012	Not a code of conduct matter. Certain issues raised fell within remit of other agencies.
3.	26/09/2012	Professed conflict of interest by a member in a planning matter	09/10/2012	No evidence to substantiate a potential breach of the code.

^{*} A review of best practice in promoting good behaviour in public life, January 2013.

		allegedly heard by a third party after the member's involvement in the decision.		Subsequent Ombudsman decision confirmed action taken was considered to be appropriate.
4.	09/11/2012	Disagreement with actions of a community organisation chaired by the member and the alleged failure to provide information requested about the subject matter of the disagreement.	06/12/2012	No breach of code considered to have occurred. Request for any further information to be directed to relevant third party organisations.
5.	09/11/2012	Alleged failure of a member to declare a disclosable pecuniary interest and to refrain from participating in the related business.	No decision, outcome advised 12/11/2012	Not a code of conduct matter, but related to a potential breach of disclosable pecuniary interest provisions.
6.	26/11/2012	(a) Member of committee failed to declare a conflict of interest in a committee matter and participated, to the alleged detriment of the complainant	30/11/2012	No evidence to substantiate a potential breach of the code.
	14/02/2013	(b) Alleged procedural impropriety at a committee	21/03/2013	Not a code of conduct matter.
7.	12/12/2012	Disagreement with a committee decision and alleged bias and disrespect towards the complainant	21/01/2013	No evidence to substantiate concerns/breach of the code
8.	14/03/2013	Alleged failure to treat with respect	09/04/2013	Not code of conduct matters.

5.6 It has not been considered necessary or appropriate for any investigations to be carried out, nor for any matters to be referred to the Standards Panel.

5.7 The approach adopted has been "light touch" as agreed when the new standards arrangements were being considered and developed.

- 5.8 The administrative arrangements have worked effectively, including the communications with Complainants, the Members complained about and the consultation with the Independent Person.
- 5.9 There have been no complaints from, or issues raised by Members about the procedure which has been followed. Feedback from one Member confirmed that enough details had been provided about the complaint; there was sufficient opportunity for the Member's views to be given about the complaint; an appropriate amount of detail was provided about the eventual decision and the complaint was handled in the right way.
- 5.10 Three of the eight complainants have been dissatisfied with the outcome of their complaints. Their concerns were considered further under the Council's Complaints procedure. In one of the cases the matter was subsequently referred to the Local Government Ombudsman. The Ombudsman accepted that the action taken on behalf of the Council was appropriate.
- 5.11 **Experience of dealing with the complaints received to date does not indicate that there are any revisions required to the agreed procedure. The absence of an appeal process (which is present in some other Authorities' arrangements) has not caused any problems to date, nor given rise to any complaints so far.**
- 6. Independent Persons**
- 6.1 The Standards (Independent Persons) Appointments Panel met on the 18 July 2013 to consider whether or not further terms of office should be recommended for the Independent Person and two reserves appointed by the Council on 18 July 2012. Further terms were recommended
- 6.2 The Panel's recommendations will be considered by Council on 11 September.
- 6.3 The arrangements regarding and working relationships with the Independent Persons have been efficient and effective.
- 7. Registers of Members' Interests**
- 7.1 A Borough Council register of interests has been established and is being maintained. It was available on the Council's former website and is to be made available on the new website. It is not, however complete in that not all Members have provided details of their interests (there are four outstanding returns).
- 7.2 Registers have been established for all Town/Parish Councils in the Borough Council's area. They were also accessible on the Borough Council's website and will be available on the new website. Links to the new website will be established on Town/Parish Councils websites (where those sites exist).
- 7.3 **Regular reminders, advice and guidance have been, and will continue to be provided to Borough Councillors and to Town/Parish Councillors through Town/Parish Clerks, of the need to submit and keep up to date their interests.**
- 8. Disclosure of Interests and Withdrawal from Meetings**
- 8.1 The procedure rules for Council, Cabinet, Executive Scrutiny Committee and Select Committees provide that a member with a disclosable pecuniary interest in any business at a meeting must leave the room during consideration of that business,

unless the member has received a dispensation to allow them to remain and participate in the consideration of the business.

8.2 There is no provision or requirement for Members with significant/prejudicial interests in any business to leave the meeting room during consideration of that business.

8.3 These are new provisions, which to date appear not to have caused any difficulties for Members or Officers. The occasions when Members have not been able to participate in discussion or voting due to a conflict of interest have been few and far between.

8.4 **It is not proposed to change these arrangements.**

9. Sensitive Interests

9.1 Two Town/Parish Councils Members' interests have been agreed to be sensitive as envisaged by the Localism Act. Details of those interests do not, therefore, appear on their Council's register of interests, in accordance with the Act.

10. Dispensations

10.1 Concerns in connection with the uncertainty regarding the legislative definition of disclosable pecuniary interests have given rise to a number of dispensations being granted by Town/Parish Councils. The arrangements for handling and determining such matters are the responsibility of the relevant Town/Parish Councils, not the Borough Council. Advice and guidance has, however been provided on the procedures to be followed and the documentation which is required in that respect.

10.2 Two individual Member dispensations (relating to the members' NHS employment) have been granted in relation to the business of the Adult Services and Health Select Committee and the Executive Scrutiny Committee; an all Member dispensation was granted for Cabinet and Council (Council Tax Payer/Council Tax/Budget Setting) and a dispensation was given to relevant members regarding the Police and Crime Panel's consideration of the Police and Crime Commissioner's precept.

10.3 The procedure, documentation (protocol and application form) and arrangements for consultation with the Independent Person have worked both proportionately and effectively.

10.4 **No changes are, therefore, considered necessary.**

11. Training

11.1 Guidance and ad hoc advice and support has been, and will continue to be provided to Members on the registration and declaration of interests.

11.2 Two training sessions were also held for Members regarding the new code of conduct, disclosable pecuniary interests and the arrangements for dealing with misconduct allegations.

11.3 **Further training can however be provided as and when required or considered appropriate.**

12. Review

- 12.1 The prime responsibility for the maintenance of high standards lies with the Council, its Members, particularly the leadership, and Officers. As previously agreed, it is therefore important that the standards arrangements which have been approved and established by the Council are reviewed and reassessed regularly.
- 12.2 **Accordingly it would be sensible to continue to review the Council's standards arrangements over time. It is suggested that a further review takes place in September, 2014 unless for any reason there is cause to undertake an earlier review of either the whole or part of the arrangements.**
- 12.3 In this context it should be recognised that the Council is externally audited, which includes its arrangements for ensuring compliance with CIPFA/SOLACE good governance guidance; that it regularly undertakes employee surveys in order to obtain views on (amongst other things) the way it runs things and on its leadership and management; and that it also conducts residents surveys to (inter alia) ask what the public think of the Council and its services and to gauge the extent of the public's trust in the Authority.
- 12.4 In addition, it should be noted that throughout 2013-14 the Committee on Standards in Public Life will continue to monitor the implementation of the new local government standards regime and intends to undertake an assessment of the state of local government standards in 2014-15.