

# Taunton Deane Borough Council

## Standards Committee - 25 January 2011

### The Future of Local Standards Framework

#### Report of the Monitoring Officer

#### 1. Purpose of the Report

- 1.1 To update the Committee on the pertinent elements of the Localism Bill that was laid before Parliament on 13 December 2010 relating to the abolition of the current Standards Regime and provide an opportunity to formulate any recommendations to Taunton Deane Borough Council on the most appropriate way forward.

#### 2. Background

- 2.1 As the Committee will be aware, the new Government has been clear about its intention to abolish the current Standards Board regime. The Department for Communities and Local Government has produced a briefing note relating to the proposed changes to the Standards regime together with a letter to the Chairmen of Standards Committees which are attached at **Appendix A** to this report.
- 2.2 The Localism Bill was laid before the House of Commons on 13 December 2010 and included provisions relating to changing the Standards regime.
- 2.3 The relevant extract from the explanatory notes to the Bill covering the chapter on Standards is attached at **Appendix B** to this report.
- 2.4 The key elements contained relating to the Standards regime in the Bill are as follows:-
- The abolition of Standards for England (formally the Standards Board).
  - The revocation of the requirement for Local Authorities to have a Standards Committee.
  - The revocation of the requirement to have a Code of Conduct for Councillors.
  - A duty on the relevant authority to ensure that Members and co-opted Members maintain high standards of conduct.
  - Provision for a relevant authority to have the option to adopt a voluntary Code of Conduct and should an allegation of a breach of such a code be made in writing, that authority must take a decision on whether or not to investigate the allegation.
  - The requirement for the establishment and maintenance of a Register of Members and co-opted Members interests.

- Making it a criminal offence for a Member to fail, without reasonable excuse, to comply with the obligations to register or declare personal interests.
- The setting out of transitional arrangements following the abolition of the Standards regime.

2.5 In summary, it is proposed to remove the Members' Code of Conduct and abolish the Standards for England and the requirement for Local Authorities to have a Standards Committee. Instead it will be a criminal offence to fail to register or withdraw for a personal interest (the scope of which awaits regulations).

2.6 Local Authorities may still adopt a non-statutory Code and will have a duty to consider allegations of breach of such a Code but there are no statutory sanctions against an offending Member so there will no longer be a power to suspend or disqualify Councillors who bully, are rude, disclose confidential information or bring their authorities in Local Government generally into disrepute. Provided they do not commit a criminal offence they will remain in office until the electorate have the chance to remove them at the next election. The definition of a "relevant authority" includes Principal Authorities such as Taunton Deane Borough Council together with Town and Parish Councils.

### **3. Implications and Discussions to date**

3.1 It is clear that the proposals relating to the Standards regime reflect the new Government's promotion of the Localism agenda whereby rather than having a top down regulated approach, it will be left to the discretion of Local Authorities/areas to determine what, if any, arrangements are put in place for dealing with Code of Conduct related issues.

3.2 Nevertheless there will be specific regulations produced that Local Authorities will be expected to follow, particularly in respect of transitional arrangements and the establishment and maintenance of a register of Members' Interests.

3.3 As part of this change in approach, it is likely that the Council will have no statutory role in relation to the operation of a Standards regime covering Parish and Town Councils. One specific point that is yet to be clarified is whether a Monitoring Officer of a Principal Council will be made responsible for ensuring that Town and Parish Councils undertake the duty of drawing up and maintaining a Register of Interests for their local Councillors.

3.4 Therefore the Committee should decide whether there should be a discussion with the Leader of the Council and the two other Group Leaders as to whether there would be value in exploring an introduction of a voluntary Code of Conduct for Taunton Deane Members and maintaining a Standards Committee to include independent Members.

3.5 In addition it would also be considered sensible for there to be close working with other Local Authorities and Monitoring Officers in Somerset. Ideally, it

should also be considered whether it would be desirable to explore options for the Council to continue to support Town and Parish Councils in Taunton Deane on standards and probity issues although it is recognised that it would be at the discretion of individual Town/Parish Councils as to whether they would wish to be part of any such arrangement.

- 3.6 In terms of timescales, at this stage it is expected that the abolition of the current regime is likely to have an implementation date around the end of 2011/early 2012. There will be a requirement for this Committee to continue its statutory role up to and including this date and any subsequent transitional arrangements that may be introduced.
- 3.7 There is therefore some time for further deliberation and discussions although the earlier there is a clear view on the way forward the better as if there is a desire to introduce a voluntary framework, the details such as the content of a voluntary Code of Conduct, the terms of reference and membership of a local Standards Committee, potential joint working with other local authorities and possible working with Town and Parish Councils will all require specific consideration and further discussion.
- 3.8 In this respect, the Monitoring Officer of the Somerset County Council has already asked district colleagues in the County to give feedback on the following issues:-
1. Whether there is an appetite for introducing any local voluntary arrangements.
  2. If the answer to 1. is yes, whether there would be an interest in working together to develop such a voluntary Code; and
  3. Whether there would be an interest in constituting one joint voluntary Standards Committee.
- 3.9 At this stage, therefore, the Committee is invited to:-
- a. Consider whether it has an agreed position on the principle of the introduction of a voluntary Code of Conduct and/or maintaining a local Standards Committee for recommendation to Full Council; and
  - b. Agree specific responses to the three points raised by the Monitoring Officer of Somerset County Council as set out above.

#### **4. Financial Implications**

- 4.1 Whilst there are no specific financial/resource implications in respect of the current report, potentially the complete cessation of a local Standards regime could provide the Council with some savings, particularly in not having to finance the cost of any investigations. This would, of course, need to be balanced against the value of any potential loss of reputation should there be

a perception that the standards of Member behaviour is not given an appropriate level of attention and priority. There is nevertheless a reality check that given the current stringent financial climate that the Council faces then it will be more challenging to devote resources to an issue that is no longer statutory.

## **5. Equalities Impact**

- 5.1 The current Code of Conduct does include specific provision for Members to pay close regard to equality and diversity issues and removal of any Code could prejudice the Council's commitment to its statutory and non-statutory equality and diversity obligations.

## **6. Environmental and Community Safety Implications**

- 6.1 There are none in connection with this report.

## **7. Consultation Implications**

- 7.1 Any way forward in respect of potentially introducing a voluntary local Standards framework would require consultation with other neighbouring local authorities at County, District and Town/Parish Council level.

## **8. Links To Corporate Aims**

- 8.1. None in relation to this report.

## **9. Risk Management**

- 9.1 If no provision is made for a process to govern and monitor the conduct of Councillors following the abolition of the current regime the reputation of standards and good governance of Local Government in Taunton Deane may suffer which would have a major impact on the reputation and credibility of the Authority.

## **10. Legal Implications**

- 10.1 The new Bill proposes to make it a criminal offence for any Member to fail without reasonable excuse to comply with obligations imposed by regulations for disclosure and registration of Members' interests.
- 10.2 This report is generated in direct response to proposed changes to the Council's Statutory obligations following the implementation of the Localism Bill.

## **11. Recommendations**

- 11.1 To decide whether to discuss with the Leader of the Council and Group

Leaders whether the Council should sign up to a voluntary Code of Conduct and retain a local Standards Committee.

- 11.2 The Committee is recommended to note the position set out in the Localism Bill relating to the abolition of the current Standards regime and formulate any recommendations for consideration by the Council on the appropriate way forward following the implementation of the Bill.

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A handwritten signature in black ink, appearing to read "Dr. Robert Chilton".

15 OCT 2010

### **Conduct of local authority members**

Recently Andrew Stunell announced the broad package of changes that we intend to put in place to abolish the Standards Board regime. A press notice relating to this announcement is available on the Department's web-site at:

<http://www.communities.gov.uk/news/corporate/157558411>

When we met on Wednesday 15 September, I undertook to let you have the details of what we are proposing once the package of changes was announced, and accordingly I enclose a short paper setting out the changes we intend to make.

I would of course be very happy to discuss these with you and your Committee. If you would like a meeting, please don't hesitate to get in touch with my office.

A handwritten signature in black ink, appearing to read "Bob Neill".

A printed signature in black ink, appearing to read "BOB NEILL MP".



## Abolition of the Standards Board regime

### **The Standards Board regime**

The Coalition Agreement *Our Programme for Government* included the commitment to “abolish the Standards Board regime”.

The Government considers that the Standards Board regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a local authority member and regulated by a central quango was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints.

The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people.

Accordingly, given the interdependencies of the bodies, requirements and guidance that constitute the Standards Board regime, the Government is proposing to abolish the regime in its entirety.

Subject to Parliament approving the necessary legislation, the changes are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked.
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities, will be revoked.
- The requirement for local authorities to have standards committees will be abolished.
- Standards for England (formally known as the Standards Board for England) will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.

- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members.

It is intended to effect the abolition of the Standards Board regime through the Localism Bill. It is anticipated that the Bill will be laid before Parliament in December and will receive Royal Assent late-2011.

The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards Board for England), 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,.

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 standards board regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures will be put in place to address this.

### **Proposed transitional measures**

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

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.

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).

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.

### **The conduct regime in a post-Standards Board world**

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.

The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

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To: Standards Committee Chairs

30 November 2010

Dear colleagues

I would like to draw your attention to a letter sent to me from the Local Government Minister, Bob Neill MP about the Government proposals for the future of standards in local government. This letter has now been published on both our and CLG's website.

As you will know, since the Coalition Government announced its intention 'to abolish the Standards Board regime', there has been little detail available about what this would mean in practice. The letter from the Minister now sets out the proposition in greater detail.

In brief, you will see that the proposal is that, alongside the abolition of Standards for England, the First Tier Tribunal (Local Government Standards in England) would lose jurisdiction over member conduct. The Government also intends to remove the national Code of Conduct for councillors and the requirement to have a standards committee. Instead it would be for councils themselves to choose whether or not they wish to have a local code or a standards committee (which would be an 'ordinary committee' of the authority and therefore not need to have independent representation). Any standards committee would no longer have the power to suspend a member. There would also be a new criminal offence created relating to failure to register or declare interests.

In the meantime, you will see that these proposals will need primary legislation. Our understanding is that the Decentralisation and Localism Bill, which would contain such provisions, will be introduced to Parliament by the end of the year. The current framework will continue in place until such time as the bill receives Royal Assent and the relevant provisions are enacted. Our understanding is that

this is likely to be some time in the summer or autumn next year, although exact timing will obviously depend upon Parliamentary progress of the bill as a whole. Consequently, in the meantime, as the Minister recognises, standards committees will continue to have a legal requirement to operate as now and, in particular, to continue to consider any allegations.

You will see that the Minister's letter sets out, in some detail, the transition arrangements that they intend to apply to any cases which will be in the pipeline at the end of the framework. While these proposals obviously depend on Parliamentary approval, in brief, Standards for England would cease to handle cases from an Appointed Day (likely to be two months after the coming into force of the provisions). At that stage, all cases still open would be passed back to the relevant local authority to complete. Any cases with the Tribunal at that stage would be completed but no further references could be made to it. Any cases being handled locally would need to be completed locally after that date by the standards committee, with no power to pass them to Standards for England or the Tribunal, but no new allegations could be made after the Appointed Day.

I hope that you find this helpful.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'R Chilton', with a stylized flourish at the end.

Robert Chilton  
Chair

# Appendix B

## Chapter 5: Standards

### ***Clause 14 - Amendments of existing provisions***

145. Clause 14, and the Schedule it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and a codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the codes of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First Tier Tribunal loses its jurisdiction over councillor conduct issues.

146. The Schedule contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

### ***Clause 15 - Duty to promote and maintain high standards of conduct***

147. Clause 15 places a duty on a relevant authority to ensure that members and co-opted members maintain high standards of conduct. It also defines what a 'co-opted member' is and what a relevant authority is for the purpose of this Chapter.

### ***Clause 16 - Voluntary codes of conduct***

148. Clause 16 provides that a relevant authority may adopt a voluntary code of conduct. If an allegation of a breach of a code is made in writing, the authority must take a decision on whether or not to investigate the allegation and, if it is considered that an investigation is warranted, investigate in any way the authority sees fit.

### ***Clause 17 - Disclosure and registration of members' interests***

149. Clause 17 provides for the establishment and maintenance of a register of members' and co-opted members' interests by the local authority by giving the Secretary of State power to make regulations to specify what interests must be recorded in that register. The regulations may make provision for restrictions on taking part in the business of the council to be imposed on a member or co-opted member with a registered or declared interest. The regulations may require the register to be available to the public and may make provision about exempting sensitive information from it.

### ***Clause 18 – Offence of breaching regulations under clause 18***

150. Clause 18 makes it a criminal offence to fail, without reasonable excuse, to comply with obligations imposed by regulations under clause 17 to register or declare personal interests, or to take part in council business when prevented from so doing by such regulations. 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 prosecuting authorities having the evidence to warrant prosecution, but only by or on behalf of the Director of Public Prosecutions.

### ***Clause 19 - Amendment of section 2 following abolition of police authorities***

151. Clause 19 removes police authorities from the list of "relevant authorities" in clause 15. The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. The clause will be commenced when police authorities cease to exist.

### ***Clause 20 – Transitional provision***

152. Clause 20 gives the Secretary of State power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions made under this clause will make provision for any such allegations to be transferred from the Standards Board for England to local standards committees, and may make provision for the penalties which can be imposed by those committees, and rights of appeal to be modified.