

Standards Committee – 24 January 2012

Minutes of a meeting of the Standards Committee held in the John Meikle Room, The Deane House, Belvedere Road, Taunton on Tuesday, 24 January 2012 at 2.30 p.m.

Present: Mrs A Elder (Chairman)
Councillors Mrs Allgrove, Brooks and Gaines
Mr H Davenport, Mr M Marshall, Mr L Rogers, Mr R Symons and
Mr B Wilson

Officers: Mrs T Meers (Monitoring Officer) and Mr R Bryant (Democratic Services Manager)

1. Apologies

Mr A Cottrell (Vice-Chairman), Mr T Bowditch, Mr A Cox and Mr D Macey.

2. Minutes

The minutes of the previous meeting of the Committee held on 7 September 2011 were taken as read and were signed.

3. Declaration of Interests

The Chairman, Anne Elder, declared personal interests as a Public Governor of the Taunton and Somerset NHS Trust and as a Member of the House Management Committee of one of the premises operated by the Royal Agricultural Benevolent Institution. Councillor Mrs Allgrove declared a personal interest as a Member of the Somerset Association of Local Councils. Councillor Brooks declared a personal interest as a Member of Somerset County Council.

4. The Localism Act 2011 - The amended Standards Regime

Considered report previously circulated, concerning The Localism Act 2011 which had made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.

The date for implementation of these changes was the 1 July 2012.

Taunton Deane would remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

The Act repealed Section 55 of the Local Government Act 2000, which provided for the current statutory Standards Committee.

Although there would be no requirement for a Council to have a Standards Committee, there would still be a need to deal with standards issues and

case-work. In such circumstances, it was felt that it would be convenient to retain a Committee but without the unique features which were conferred by the previous legislation. As a result:–

- The composition of the Committee would be governed by proportionality, unless the Council voted otherwise. The restriction to have only one Member of the Executive on the Standards Committee would cease to apply;
- The current co-opted independent Members would cease to hold office. The Act established a new category of Independent Persons but made it clear that the existing co-opted independent Members could not serve as Independent Persons for five years;
- The Council would continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils, but the current Parish Council representatives would cease to hold office. The District Council could choose whether it wanted to continue to involve Parish Council representatives and, if so, how many representatives it wanted.

The choice would be between establishing a Standards Committee with co-opted but non-voting Parish Council representatives or establishing a Standards Committee as a Joint Committee with the Parish Councils within Taunton Deane and having a set number of Parish Council representatives as voting members of the Committee.

Reported that the current ten General Principles and Model Code of Conduct would be repealed by the Act and Members would no longer have to give an undertaking to comply with the Code of Conduct.

However, the Council would be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity. The new Code was required to be consistent with the following seven principles:–

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

The Council had discretion as to what it included within its new Code of Conduct, provided it was consistent with these principles. However, regulations to be made under the Act would require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also

required a Council's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Act prohibited Members with a DPI from participating in Council business, and the Council had the option to adopt a Standing Order requiring such Members to withdraw from the meeting room.

The Act also required the Council to adopt "arrangements" for dealing with complaints of breaching the Code of Conduct both by Taunton Deane Members and by Parish Council Members.

The "arrangements" had to set out in detail the process for dealing with complaints of misconduct and the actions which might be taken against a Member who was found to have failed to comply with the relevant Code of Conduct. The Council would be enabled to establish its own process, which could include delegation of decisions on complaints.

It was felt sensible to take advantage of the new flexibility by delegating to the Monitoring Officer the initial decision as to whether a complaint required investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee.

Such arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision as to whether the complaint merited formal investigation. It would be appropriate for a quarterly report to be submitted to the Standards Committee concerning the number and nature of complaints received and drawing to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

In situations where a formal investigation found no evidence of failure to comply with the Code of Conduct, it was thought reasonable to also delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if it was felt appropriate. Copies of all investigation reports could be provided to the Independent Person to enable him/her to obtain an overview of current issues and pressures with a summary report of each such investigation being submitted to the Standards Committee for information.

Where a formal investigation found evidence of failure to comply with the Code of Conduct, there might be an opportunity for local resolution, avoiding the necessity of a local hearing. It was suggested that this could occur after consultation with the Independent Person and where the complainant was satisfied with the outcome.

In all other cases, where the formal investigation found evidence of a failure to comply with the Code of Conduct, it would be necessary for a

Hearing Panel of the Standards Committee to hold a hearing at which the Member against whom the complaint had been made could respond to the investigation report. The Hearing Panel could determine whether the Member had failed to comply with the Code of Conduct and what action, if any, was appropriate as a result.

Further reported that the Act did not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members.

Where a failure to comply with the Code of Conduct was found, the range of actions which the Council could take in respect of the Member was limited and had to be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than “punishing” the Member concerned. Details as to what this might comprise in practice, was submitted.

There was a particular difficulty in respect of Parish Councils, as the Localism Act gave the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the Member.

Parish Councils would be under no obligation to accept any such recommendation unless the Council constituted the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and then sought the delegation of powers from the Parish Council to the Hearings Panels. If this were to be done, the Hearings Panels could effectively take decisions on action on behalf of a particular Parish Council.

The “arrangements” adopted by the Council had to include provision for the appointment by Full Council of at least one Independent Person.

The Independent Person would have to be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of Members of the Council.

The criteria of what would preclude someone being considered “independent” was set out in the report.

The functions of the Independent Person(s) were:–

- They had to be consulted by the Council before it made a finding as to whether a Member had failed to comply with the Code of Conduct or decided on action to be taken in respect of that Member;
- They had to be consulted by the authority in respect of a standards complaint at any other stage; and

- They had to be consulted by a Member or co-opted Member of the Council or of a Parish Council against whom a complaint has been made.

Noted that this could cause some problems, as it would be inappropriate for an Independent Person who had been consulted by the Member against whom the complaint had been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

As the Independent Person was not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer came within the scheme of Members' Allowances.

The Localism Act had abolished the concepts of personal and prejudicial interests. Instead, regulations would define "Disclosable Pecuniary Interests" (DPIs).

The Monitoring Officer would be required to maintain a Register of Interests, which had to be available for inspection and available on the Council's website. The Monitoring Officer was also responsible for maintaining the register for Parish Councils, which also had to be open for inspection at The Deane House and on the Council's website.

At present it was not known what DPIs would comprise, but they were likely to be broadly equivalent to the current prejudicial interests but with a number of important differences, details of which were submitted.

Each elected or co-opted Member would be required to register all DPIs within 28 days of becoming a Member. Failure to register had been made a criminal offence, but would not prevent the Member from acting as a Member.

The provisions on dispensations were significantly changed by the Localism Act.

In future, a dispensation would be able to be granted in the following circumstances:—

- (i) That so many Members of the decision-making body had DPIs in a matter that it would "impede the transaction of the business". In practice this meant that the decision-making body would be inquorate as a result;
- (ii) 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. This assumed that Members were predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;

- (iii) That the authority considered that the dispensation was in the interests of persons living in the authority's area;
- (iv) That without a dispensation no Member of the Executive would be able to participate on this matter (so the assumption would be that, where the Executive was inquorate as a result, the matter could then be dealt with by an individual Executive Member. It would be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- (iv) That the authority considered that it was otherwise appropriate to grant a dispensation.

During the discussion of this item, Members made the following comments:-

- The proposed make up of any new Standards Committee would result in all the accumulated experience of the current Committee being lost;
- Would there be any merit in the former County Joint Committee being re-established to oversee Standards in Somerset?
- The new Independent Person who had to be consulted would very likely commence the role without any relevant experience;
- Parish Council representatives on the new Standards Committee would have to have voting rights if Taunton Deane wanted its Parish Councils to fully participate in the new arrangements;
- The Parish Liaison Officer was likely to be hard pressed to persuade all Parish Councils in the district to adopt the same code as Taunton Deane's new version;
- The Somerset Association of District Councils was attempting to find a way forward for all parishes to adopt the same Code of Conduct later in the year;
- It was felt this was unlikely to occur as there was no requirement for a Code to be approved by anyone other than the Parish Council itself; and
- Hoped that the Independent Persons appointed in Somerset could, where appropriate, work across the district boundaries to provide experience and keep costs down. Joint training could also be provided too.

Mrs Meers stated that more information from the Department for Communities and Local Government, together with the draft Regulations, were currently awaited. These would hopefully be to hand before the Committee's next meeting in March.

The Committee expressed its deep dissatisfaction with the proposed new Standards Regime. Even though it was accepted that the Localism Act had now be enacted, the Committee felt that the Member

of Parliament and, if appropriate, other senior figures should be invited to a future meeting of the Committee to hear first hand the very real concerns Members had about the effectiveness of a new Code of Conduct and how complaints would be dealt with in the future.

Resolved that:-

- (1) The Monitoring Officer be requested to write to the local Member of Parliament, Mr Jeremy Browne, setting out the Committee's concerns about the new Standards Regime which was to be brought into effect from July 2012 and inviting him to attend a future meeting of the Committee to discuss those concerns; and
- (2) In connection with the proposals for the new Standards Regime, the following recommendations be supported:-

Recommendation 1

- (a) That the Council established a Standards Committee comprising eight elected Members of the District Council, appointed proportionally;
- (b) That the Leader of the Council be requested to nominate to the Committee only one Member who was a member of the Executive; and
- (c) That the Council established a Joint Committee with the Parish Councils and the Parishes be invited to nominate a maximum of three Parish Councillors to be co-opted as voting Members of the Committee.

Recommendation 2

- (a) That the Monitoring Officer be instructed to prepare and present to Full Council for adoption a draft Code of Conduct. The draft Code should:-
 - (i) equate to Paragraphs 3 to 7 of the current Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the Council or its Committees and Sub-Committees; and
 - (ii) require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only required withdrawal as stated by the Act in relation to Disclosable Pecuniary Interests.
- (b) That, when the Disclosable Pecuniary Interests Regulations were published, the Monitoring Officer, after consultation with the Chairman of the Standards Committee, the Mayor and the Group

Leaders be required to add to the draft Code provisions which it was considered to be appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests.

Recommendation 3A

That the Monitoring Officer be instructed to prepare and submit to Full Council for approval “arrangements” as follows:-

- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- (b) That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merited formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that officer be given discretion to refer decisions on investigation to the Standards Committee where it was deemed inappropriate for the Monitoring Officer to take the decision, and to report quarterly to Standards Committee on the discharge of this function;
- (c) Where the investigation found no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;
- (d) Where the investigation found evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution was not appropriate or not possible, the Monitoring Officer was to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- (e) That Full Council be requested to delegate to the Hearings Panels such of its powers as could be delegated to take decisions in respect of a Member who was found on hearing to have failed to comply with the Code of Conduct, such actions to include:-
 - Reporting its findings to Full Council [*or to the Parish Council*] for information;
 - Recommending to the Member’s Group Leader (or in the case of un-grouped Members, recommend to Full Council or to

Committees) that he/she 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 Executive, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to *[or recommending that the Parish Council]* arrange training for the Member;
- Removing *[or recommending to the Parish Council that the Member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- Withdrawing *[or recommending to the 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 Parish Council exclude]* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Recommendation 3B

That a meeting be arranged between the Chairman of the Standards Committee and the Group Leaders for the Council and representatives of Parish Councils to discuss how the new system could best operate.

Recommendation 4

- (a) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee, the Mayor and the Group Leaders, with the advice of the Retained HR Manager, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Committee;
- (b) That the Monitoring Officer be authorised to advertise a vacancy of the appointment of one Independent Person and two Reserve Independent Persons;
- (c) That a Committee comprising the Chairman and three other Members of the Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Full Council for appointment; and
- (d) That an agreement be reached with the other Somerset Authorities

as to the use of one of their Independent Persons should there be a conflict.

Recommendation 5

- (a) That the Monitoring Officer should prepare and maintain a new Register of Members' Interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it was available for inspection as required by the Act;
- (b) That the Monitoring Officer ensured that all Members were informed of their duty to register interests;
- (c) That the Monitoring Officer should prepare and maintain new Registers of Members' Interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it was available for inspection as required by the Act; and
- (d) That the Monitoring Officer arranges to inform and train Parish Clerks on the new registration arrangements.

Recommendation 6

That the Monitoring Officer be instructed to recommend to Full Council a Standing Order which equated to the current Code of Conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she had a Disclosable Pecuniary Interest, except where he/she was permitted to remain as a result of the grant of a dispensation.

Recommendation 7

That Full Council delegated the power to grant dispensations:-

- (a) on the grounds set out in sub-paragraphs (i) and (iv) above to the Monitoring Officer with an appeal to the Standards Committee, and
- (b) on the grounds set out in sub-paragraphs (ii), (iii) and (v) to the Standards Committee, after consultation with the Independent Person.

5. The Model Arrangements

The Model Arrangements for dealing with standards allegations under the Localism Act 2011 were submitted for consideration by Members.

Resolved that the Model Arrangements be noted.

6. Date of next meeting

The next meeting would be held on Tuesday, 20 March 2012 at 2.30 p.m. in The John Meikle Room at The Deane House.

7. Exclusion of the Press and Public

Resolved that the press and public be excluded from the meeting for the following items because of the likelihood that exempt information would otherwise be disclosed relating to Clause 2 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding the information outweighed the public interest in disclosing the information to the public.

8. Update on complaints made against Councillors

Mrs Meers reported that with regard to the one current complaint against a Taunton Deane Councillor, the investigator appointed had now submitted his final report.

A Consideration Sub-Committee would shortly be set up to decide whether a hearing into the complaint should be held.

Mrs Meers also reported that an Assessment Sub-Committee had been held immediately prior to the meeting of the Standards Committee to assess complaints that had been received against Parish Councillors from three of Taunton Deane's Parish Councils.

She added that all complaints would need to be resolved by 30 June 2012, before the new Standards Regime as required by the Localism Act came into effect.

Resolved that the report be noted.

(The meeting ended at 4.11 p.m.)