

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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REPORT TO: Standards Committee

19 January 2011

AUTHOR/S: Executive Director (Corporate Services) / Deputy Monitoring Officer

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### THE FUTURE OF STANDARDS

#### Purpose

1. To inform the Committee of the proposed changes to the standards regime following the publication of the Localism Bill on 13th December 2010 and to agree a way forward in the light of the proposed legislative changes.
2. This is not a key decision.

#### Recommendations

3. That the Standards Committee note the report and consider:
  - (a) whether it wishes to make any representations to the Government on the contents of the Bill, even if not being formally consulted about it; and
  - (b) whether it wishes to appoint a working party / delegate the role to the Chairman and Vice-Chairman of the Committee to consider the future of the Standards Committee and the Code of Conduct at South Cambridgeshire District Council.

#### Reasons for Recommendations

4. The Standards Committee is asked to consider which actions it considers appropriate, based on the information currently available, to address the proposed legislative changes and the future of an ethical standards regime at South Cambridgeshire District Council.

#### Background

5. The Government announced in the Queen's Speech on 25 May 2010 that the Decentralisation and Localism Bill would include proposals to 'abolish the Standards Board regime'. No further details were available at the time.
6. On 20 September 2010 the Department for Communities and Local Government (DCLG) published an announcement that "the whole Standards Board regime consisting of a centrally prescribed code of conduct, standards committees with the power to suspend councillors and an unelected central body will be axed in the upcoming Localism Bill". The DCLG's announcement included the following statement from the Communities Minister, Andrew Stunell:

*"...we are axing the unpopular and unelected standards board regime. Instead we will legislate to ensure that if a councillor is corrupt and abuses their office for personal gain they will be dealt with in the criminal courts. If a councillor behaves ineffectively or irresponsibly then it's a matter for the electorate and not an unelected quango.*

*"This Government is freeing councillors from central prescription and top down bureaucracy so they can get on with their job. In the future councillors must*

*expect to be judged at the ballot box by an electorate with real access to their accounts and personal interests in a new transparent era.”*

7. The DCLG announcement also included the following statement from the Communities Secretary, Eric Pickles:  
*“...by abolishing the failed standards committees we’re not letting councillors off the hook. Failure to register or declare an interest, or deliberately seeking to mislead the public about an interest, will become a criminal offence...”*
8. Prior to the publication of the Localism Bill the Department for Communities and Local Government (DCLG) provided Standards for England with further information as to the government’s plans. **Appendix A** comprises the text of a letter from the Chair of Standards for England to the Chairs of Standards Committees, and **Appendix B** is the letter from DCLG referred to in Appendix A.
9. Chapter 5 of the Localism Bill (in its current form) includes the following key points in relations to standards:
  - Councils will still have a duty to promote and maintain high standards of conduct with its members and co-opted members
  - The national Members’ Code of Conduct will be revoked
  - Standards for England will be abolished
  - The statutory requirement for local authorities to have a standards committee will be removed
  - Councils can adopt a voluntary code of conduct
  - Local authorities will have a duty to consider allegations of breach of such a code The Bill currently provides that if a written allegation of failure to observe a code is received it must decide whether it is appropriate to investigate the allegation, and if it decides an investigation is appropriate, carry out that investigation as it sees fit
  - There will be no statutory sanctions against an offending member – sanctions for breach of a local Code will be up to each council (and suspension of a member is no longer an available option).
  - Councillors will have to register certain personal interests in a publicly available register; this could include anything that could reasonably be regarded as likely to influence or affect their actions, conduct when on business for the authority, or voting.”
  - It becomes a criminal offence to fail to register or withdraw for a personal interest (the scope of which awaits regulations). It is not yet clear whether the “personal interests” that will need to be recorded in the “publicly available register” referred to in the DCLG’s announcement will be different to the “personal interests” that members are currently required to register in the Council’s register of members’ interests under paragraph 13 of the Code of Conduct.
  - A schedule to the Bill provides for the Committee’s role in relation to politically restricted posts to be undertaken by the Head of the Paid Service.
10. If a Council decides not have any kind of code of conduct in place then, provided they do not commit a criminal offence, there will no longer be a statutory power to suspend or disqualify councillors who bully, are rude to officers, other members or the public, disclose confidential information or bring their own authorities and local government generally into disrepute. Such councillors will remain in office until the electorate have a chance to state their views about them via the ballot box at the next election. An article entitled “*What follows Standards? It’s a Post Code Lottery*” by Peter Keith-Lucas from Bevan Brittan Solicitors (who has previously provided training for councillors at this council on the Code of Conduct) is attached as **Appendix C** for

consideration. Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life gave his views in a press notice attached at **Appendix D** saying that: *“the lack of a national code of conduct and an independent complaints mechanism in the proposed new regime for standards in local government risks lower standards and a decline in public confidence.”* In his view: *“It is essential that there remains a national code of conduct so that both councillors and – most importantly- the public can judge what is acceptable behaviour and what is not.”*

11. The Government also included a provision in the Localism Bill (Section 13) to clarify the rules on pre-determination and bias by providing that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The Government says that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, there will be little change as the courts have already asserted that such activities will not preclude participation in decision-making as it is perfectly acceptable to be “pre-disposed” towards something (ie. to have expressed a view) – the issue has always been where a councillor is so committed that they are not even prepared to listen to the evidence which means they can be said to have a “closed mind” on a matter.

#### **Timescale for Change**

12. On 8 November 2010 the DCLG published its Business Plan for 2011 – 2015. According to this Business Plan, the Localism Bill (which will contain the necessary legislation to abolish the current Standards Regime) should have been introduced in November 2010 but its publication was delayed and it was given its first reading in Parliament on 13 December 2010. In order to abolish the current Standards Regime in its entirety, the majority of Part III of the Local Government Act 2000 will need to be repealed, together with supplementary legislation such as the Standards Committee (England) Regulations 2008.
13. It is now clear that the intended “appointed day” will be approximately two months after the Bill receives Royal Assent, and therefore in approximately March 2012, and that it will not be possible for allegations of breaches of the code of conduct to be made after that time.
14. The Business Plan document also explains the key elements of the transitional arrangements which will be put in place to deal with any complaints which have not been completed as of the appointed day. The key points are:
  - the Standards Committee will stay in place until the last complaint has been dealt with, and the option of referring a matter to Standards for England will not longer exist
  - the First-tier Tribunal (Local Government Standards in England) will not receive any appeals against standards committee rulings after that date
  - there will be no right of appeal for any outstanding cases, and the suspension sanction will no longer be available to standards committees in the transitional period
15. The document states that the government “is committed to maintaining high standards of conduct in office” and that 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”. Failure to comply will be a criminal offence.

### **Impact on Parish Councils**

16. The provisions in the Localism Bill do not make it clear whether a principal council could still agree to undertake the role of handling complaints in relation to the members of Town and Parish Councils. The duty on a district council to promote and maintain high standards of conduct by its members is also given to parish councils as a “relevant authority”, as are the provisions about ability to adopt a voluntary code of conduct. The provisions about disclosure and registration of members’ interests refer to the overseeing responsibility being held by the monitoring officer of a relevant authority, which currently is the District Council’s monitoring officer. However the Bill goes on to say that the reference to a monitoring officer in relation to a parish council includes “such person as may be specified” – the word “specified” means specified in subsequent regulations.
17. It remains to be seen whether there will be any guidance or suggestions, for example from the Local Government Association or the National Association of Local Councils, in relation to the establishment of voluntary codes of conduct and / or Standards Committees, and it is suggested that this aspect will be a matter for consideration by the Council in due course.

### **Options**

18. The Committee may wish to consider if it would like to make any representations to the Government on the contents of the Bill, even if the Government is not running a formal consultation on the Bill.
19. The Committee may also wish to consider whether it wishes to appoint a working party from amongst its members to consider the future of the Standards Committee and the Code of Conduct at South Cambridgeshire District Council. Alternatively the Committee could delegate this role to the Chairman and Vice-Chairman of the Committee. Such a working party or delegation could seek to meet with the Leader and other political group leaders to agree a unified approach to the future of standards which can be put before Full Council for agreement later in the year.

### **Implications**

20. It should be noted that until the relevant legislation is passed the current statutory framework remains operative, and that Standards for England has advised that they will “continue to work with and support local authorities in ensuring the maintenance of a proper framework of local accountability in which the public can have confidence”.

21. Financial	No implications at this stage.
Legal	No implications at this stage.
Staffing	No implications at this stage.
Risk Management	No implications at this stage.
Equality and Diversity	No implications at this stage.
Equality Impact Assessment	No.
completed	Not completed because the full legislative framework is not yet available.

Climate Change	No implications.
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### **Effect on Strategic Aims**

22. No specific effects have been identified at this stage.

### **Conclusions / Summary**

23. Based on the information currently available at the time of agenda publication, the Standards Committee must consider which actions it considers appropriate to address the forthcoming legislative changes and the future of an ethical standards regime at South Cambridgeshire District Council.

**Background Papers:** the following background papers were used in the preparation of this report:

The Queen's speech (25 May 2010)

Department for Communities and Local Government announcement (dated 20 September 2010)

Department for Communities and Local Government Business Plan for 2011 – 2015 (published 8 November 2010)

The Localism Bill (published 13 December 2010)

**Contact Officer:** Fiona McMillan – Legal and Democratic Services Manager & Deputy Monitoring Officer  
Telephone: (01954) 713027