

<b>Subject:</b>	Localism Act 2011 and Standards Arrangements Update		<b>Status:</b>	For Publication	
<b>Report to:</b>	Standards Committee Council		<b>Date:</b>	6 <sup>th</sup> March 2012 21 <sup>st</sup> March 2012	
<b>Report of:</b>	Director of Business		<b>Portfolio Holder:</b>	Customers, Legal and Licensing	
<b>Key Decision:</b>	No – reserved for Full Council	Forward Plan <input type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>	
<b>Community Impact Assessment:</b>	Required:	No	Attached:	No	
<b>Biodiversity Impact Assessment</b>	Required:	No	Attached:	No	
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<b>1.</b>	<b>RECOMMENDATION(S)</b>
1.1	That members note the Localism Act 2011 update and the results of the Standards Survey.
1.2	That the Council maintains the existing Code of Conduct and current procedures for dealing with complaints at a local level until full guidance is available, when a report will be brought to full Council.
1.3	That officers are recommended to start the advertising and recruitment process for up to three independent persons.
1.4	That a sub committee be set up to look at matters raised from the public consultation and to review the guidance as it filters through.

## 2. PURPOSE OF REPORT

- 2.1 To update members of the requirements of the Localism Act 2011 in relation to standards arrangements.

## 3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

## 4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- Failure to comply with the Localism Act 2011 may risk legal proceedings being taken against the Council.

## 5. BACKGROUND AND OPTIONS

- 5.1 The Localism Act 2011 gained Royal Assent on 15<sup>th</sup> November 2011. Under the Act Standards for England will be abolished and the government has now clarified that this will happen on 31<sup>st</sup> March 2012. Whilst Standards for England will be abolished, standards do not disappear and councils will be required to promote and maintain high standards of conduct by members and co-opted members of the authority.

- 5.2 In relation to the new arrangements the following timescales have been confirmed:  
**31<sup>st</sup> January 2012**

- Standards for England will stop taking new cases.

### **31<sup>st</sup> March 2012**

- Standards for England will be abolished and all ongoing cases will be returned to local authorities.

### **1<sup>st</sup> July 2012**

- Existing code of conduct will be abolished.

- Requirement to have a Standards Committee will be abolished

- Failing to declare or register an interest will become a criminal offence.

- Sanctions of disqualification and suspension will be abolished.

- New duty for councils to promote and maintain high standards of conduct by members and co-opted members of the authority comes into effect.

5.3 From 1<sup>st</sup> July 2012 councils will be expected to have new arrangements in place to deal with standards issues. This includes:

- Adopting a code of conduct dealing with the conduct expected of members and co-opted members of the authority when they are acting in that capacity.
- Appointing independent person/s whose views will be sought on any allegations made.
- Adopting arrangements under which allegations can be investigated and decisions made.
- Maintaining a register of members interests and publishing it on the council's web site.

### **5.4 Standards Committees**

The requirement to have a Standards Committee or independent chair will be abolished on 1<sup>st</sup> July 2012. However, councils are still required to promote and maintain high standards and adopt a process for dealing with allegations of misconduct.

### **5.5 New Code of Conduct**

Council's have the option of producing a new code of conduct or adopting the existing code of conduct (with any required revisions). Whilst it is entirely up to each council to decide on the contents of the code, the following must be included:

- The principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. (see Appendix A – Appendix 1 for details of the principles).
- Provision for the registration and disclosure of “pecuniary” and “other” interests within 28 days. (Further guidance is awaited on disclosable pecuniary interests).

Other local authorities across Lancashire are currently looking to adopt the ACSES (Association of Council Secretaries and Solicitors) Code of Conduct. (See Appendix A) This is to ensure that the code of conduct will be similar across authorities for dual-hatted members.

### **5.6 Independent Person/s**

Under the new requirements the authority must appoint at least one independent person whose views must be sought before a decision is made on an allegation. It is recommended that two independent persons are appointed to cover for holidays/absence or where there is a conflict of interest.

The council will need to recruit independent person/s as per legislation. In appointing independent persons, the council must advertise and applicants must submit an application and be selected to the post. It is proposed to advertise on the council web site, through community groups, placing posters on neighbourhood notice boards, and also appealing to current independent members serving at neighbouring authorities (to maximize the chances of recruiting someone with existing experience of dealing with standards allegations). The appointment/s must be agreed by full Council and appointees will be paid travel expenses.

## 5.7 **Process for dealing with allegations and details of sanctions**

The council is required to ensure there are arrangements in place for investigating allegations and issuing decisions. Whilst it is entirely up to each council to decide on these arrangements an independent person must be consulted before a finding/decision is made.

As of 1<sup>st</sup> July 2012 failing to declare or register an interest will become a criminal offence and the sanctions of disqualification and suspension will be abolished. All powers to impose a penalty must be approved by Full Council. Possible penalties can include training, removal from a committee/outside body, censure etc. (Further details are awaiting in relation to criminal offences and sanctions).

## 5.8 **Register of Interests**

A register of interests must be kept by the Council (for members and co-opted members), it must also be published on the Council's web site. The Council is also responsible for maintaining and publishing the register of interests for Whitworth Town Council (see additional details at 5.10 for Parish Councils).

Whilst it is for the relevant authority to determine what is to be entered into the register there are statutory requirements in relation to disclosure of pecuniary interests. Pecuniary interests must be declared within 28 days of taking office. A pecuniary interest can relate to:

- That of the member/co-opted member, or
  - o That of their spouse/civil partner
  - o That of someone the member is living with as husband/wife
  - o That of a person they are living with as if they were a civil partner (where the member is aware that the other person has the interest)

Where meetings are concerned a member/co-opted member must disclose a pecuniary interest at the start of the meeting if the interest is not already disclosed in the register of interests.

Once a member/co-opted member becomes aware they have a pecuniary interest they must disclose it to the Monitoring Officer within 28 days.

A member/co-opted member may not participate in discussion at meetings or take a vote on any matter where they have a pecuniary interest.

In relation to sensitive interests if a member/co-opted member and the Monitoring Officer feel there is risk of violence or intimidation, an interest can be withheld from the register. However the register of interests may be required to state that the member/co-opted member has an interest the details of which are withheld under subsection 32(3).

(Further guidance and clarification is awaited on the Register of Interests as well as information on Offences).

## 5.9 **Dispensations**

Dispensations can be granted by the proper officer to a members with a disclosable pecuniary interest to allow them to speak/vote, but before a dispensation is made a time period must be specified and be no longer than a period of 4 years. Dispensations can be granted for the following reasons:

- The number of members prevented from speaking/voting would impede the transaction of the business.
- Political imbalance would affect the outcome of the vote.

- Members of the Cabinet would be prohibited from participating in any particular business.
- Dispensation would be in the interests of people living in Rossendale.
- It is considered appropriate to grant a dispensation.

To be granted a dispensation a written request must be made to the proper officer.

#### 5.10 **Parish Councils**

From 1<sup>st</sup> July 2012 Parish Councils will be required to:

- Adopt a code of conduct (which can be the same as Rossendale Council).
- Promote and maintain high standards of conduct of members and co-opted members.

In relation to allegations of misconduct, these are to be dealt with by Rossendale Council under their agreed procedure. Rossendale Council will also be responsible for maintaining a register of members interests for parish councillors and publishing it on Rossendale Council's web site. If the parish has its own web site, which Whitworth Town Council does, members interests must also be published on Whitworth Town Council web site.

- 5.11 A standards questionnaire was circulated to members in January to seek their views in relation to standards matters. A copy of the results have been included at Appendix B.

#### **COMMENTS FROM STATUTORY OFFICERS:**

##### **6. SECTION 151 OFFICER**

- 6.1 There are no material financial implications.

##### **7. MONITORING OFFICER**

- 7.1 All legal implications are commented upon in the body of the report.

##### **8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)**

- 8.1 There are no HR implications arising from the report.

##### **9. CONSULTATION CARRIED OUT**

- 9.1 Statutory Officers, Legal Officers, Standards Committee and Committee and Member Services.

- 9.2 A survey was sent to all members seeking their views on future arrangements. Results of the survey are attached at Appendix B.

- 9.3 The Standards Committee met on the 6<sup>th</sup> March and agreed the following:

1. That members note the Localism Act 2011 update and the results of the Standards Survey.
2. That Council be recommended to maintain the existing Code of Conduct and current procedures for dealing with complaints at a local level until full guidance is available, when a further report will be brought to full Council.
3. That officers are recommended to start the advertising and recruitment process for up to three independent persons.
4. That a sub committee would be set up to look at matters raised from the public consultation and review the guidance as it filters through.
5. That the report be updated at 5.6 to state the following: 'The council will need to recruit independent person/s as per legislation. In appointing independent persons, the council must advertise and applicants must submit an application and be selected to the post. It is proposed to advertise on the council website, through community groups, placing posters on neighbourhood notice boards, and also appealing to current independent members serving at neighbouring authorities (to maximize the chances of recruiting someone with existing experience of dealing with standards allegations). The appointment/s must be agreed by full Council and appointees will be paid travel expenses.'

6. That point four of the Draft Code of Conduct be removed.
7. That 'Respect for Others' be included in the Nolan Principals.

**10. CONCLUSION**

10.1 The Council is required by law to fulfil the requirements of the Localism Act 2011 as well as maintain a Constitution and regularly update the document.

Background Papers	
Document	Place of Inspection
The Constitution of the Council	<a href="http://www.rossendale.gov.uk/constitution">www.rossendale.gov.uk/constitution</a>
Localism Act 2011	<a href="http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted">www.legislation.gov.uk/ukpga/2011/20/contents/enacted</a>

## Draft CODE OF CONDUCT

### Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code. You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the “Nolan Principles – the seven principles of public life” which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

### Interpretation

In this Code—

“meeting” means any meeting of—

- (a) the authority;
  - (b) the executive of the authority;
  - (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;
- whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

“member” includes a co-opted member and an appointed member.

### General Obligations

1. When acting in your role as a member of the authority:

1.1 **Do** treat others with respect.

1.2, **Do not** conduct yourself in a manner which is contrary to the Council’s duty to promote and maintain high standards of conduct of members.

1.3 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional *legal* advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
  - (aa) reasonable and in the public interest; and
  - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
  - (cc) you have consulted the Monitoring Officer prior to its release; or

1.4 **Do not** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority—

2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies listed at appendix 3, copies of which have been provided to you and which you are deemed to have read ;

2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and

2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

### **Interests [Subject to localism Bill]**

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

### **Disclosure and participation [Dependant on contents of interests Above]**

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.

6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.

8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

### **Pre-determination or bias [Subject to Localism Bill provisions]**

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or

organisations that might seek to influence you in the performance of your official duties.

10 When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

**Interests arising in relation to overview and scrutiny committees [Subject to Localism Bill provisions]**

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—

11.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, subcommittees, joint committees or joint sub-committees; and

11.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken;

Or

11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

**You may** attend a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise

## **APPENDIX 1**

### **THE SEVEN PRINCIPLES OF PUBLIC LIFE**

#### **SELFLESSNESS**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### **INTEGRITY**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

#### **OBJECTIVITY**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### **ACCOUNTABILITY**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### **OPENNESS**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **HONESTY**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### **LEADERSHIP**

Holders of public office should promote and support these principles by leadership and example

## APPENDIX 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, *unless* it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

## STANDARDS QUESTIONNAIRE

Appendix B

1. Are you a member of Borough Council or town Council?	6 RBC 4RBC and Whitworth Town Council 1 Independent 1 Town Council
2. Is there anything that works well in the current Code of Conduct?	9 said yes (1 commented there is always room for improvement) 1 said needs revising 1 didn't answer 1 said no (and commented that whilst the code is fairly sensible the way it is interpreted is often inconsistent)
3. Should the Borough and Town Council have a Code of Conduct?	All said yes
4. What would you like included in a new Code of Conduct?	The present code Further details about the circumstances of declaring interest Clearer definition of when a member is acting as a councillor and when acting as an individual Fairness and openness Nothing Balance and fairness Respect for each other Clearer guidance on the use and abuse of social media Behaviour, misconduct, abuse of office

## STANDARDS QUESTIONNAIRE

<p>5. What would you like excluded in a new Code of Conduct?</p>	<p>All wording that is not “plain English”  Vague statements that can lead to frivolous accusations being made  Not sure  6 said nothing  Any personal and prejudicial issues.  Elections, dress code  None of it</p>
<p>6. Should breaking the Code carry a penalty?</p>	<p>10 said yes (1 also commented always)  2 said depends on severity</p>
<p>7. What should the penalty be?</p>	<p>4 depends on severity/breach  1 censure, retraining covering what caused the breach, counselling and suspension if the breach is substantial.  1 as it present  1 fits the seriousness of the offence  1 banning from meetings and loss of allowance.  1 written warning, extra training, suspension or in exceptional circumstances expulsion.  1 proportionate to the breach  1 not for them to say  1 similar to present but with an open, honest, independent, and consistent approach</p>

## STANDARDS QUESTIONNAIRE

<p>8. Who should decide complaints about Members of Council, full Council or the Standards Committee or something else?</p>	<p>5 Standards Committee/Panel            1 cross section of councillors – equal number from groups including Independents            2 sub-committee – hear complaint. Monitoring Officer and senior member of committee to determine whether the complaint has merit            1 politically, public balanced committee.            2 something else (1 also commented that as the standards committee are usually made of sitting councillors and council employees all of whom may know the person/councillor concerned).            1 independent standards committee - totally independent.</p>
<p>9. Should the Borough Council continue to have a Standards Committee?</p>	<p>9 yes (1 also commented that it is important to maintain standards)            1 Standards Panel on same basis as other Working Groups            2 No – (1 commented that it should be convened as and when there is a need and 1 commented not in the current format).</p>
<p>10. Should Independent Members continue to have a role in Standards?</p>	<p>10 yes (1 commented only if they are really independent and 1 commented that otherwise party political bias would come into play)            1 no            1 yes but I would question their right to chair as they are not accountable</p>

## STANDARDS QUESTIONNAIRE

<p>11. Any other comments about the Code of Conduct or ethical standards in general?</p>	<ul style="list-style-type: none"><li>• At all times it must be seen to be fair and balanced.</li><li>• Important but have Code but difficult to manage if politicians involved in discipline.</li><li>• Need complaints dealt with in the open, but some information disclosed should be confidential, publish outcome on the Council's website.</li><li>• Used for petty way "tit for tat" – which wastes time and money and creates ill feeling.</li><li>• I feel it is important to maintain this safeguard.</li><li>• This is an opportunity to get a proper, fit for purpose standards regime, that properly understands its' role and remit. We need a decent selection process to choose appropriate people to participate in this very important function.</li><li>• The code of conduct should and must be balanced at all times.</li></ul>
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