

Manchester City Council Report For Information

Meeting: Standards Committee - 14 March 2011

Subject: The Future of the Standards Board Regime - Update

Report of: The City Solicitor

Purpose of the Report:

To update the Standards Committee on the future of the Standards Board regime.

Recommendation:

To note the contents of this report.

Financial Consequences for Revenue Budget:

None.

Financial Consequences for the Capital Budget:

None.

Wards Affected:

All.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background Documents:

1. Clauses 14-20 (inclusive) and Schedule 4 of the Localism Bill (as introduced to the House of Commons on 13 December 2010).
2. Report of the City Solicitor to the Council's Standards Committee dated 17 January 2011 on The Future of the Standards Board Regime.
3. DCLG Impact Assessment: *Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests.*

1. Background

- 1.1 On 17 January 2011 the City Solicitor presented a Report to the Council's Standards Committee that outlined the major changes to the current Local Authority Standards Regime contained in the Localism Bill.
- 1.2 At its meeting on 17 January 2011 the Council's Standards Committee requested that the City Solicitor should taken the following actions in response to the publication by the Coalition Government of its proposals in relation to changes to the current Standards Regime:
 - (a) That the City Solicitor should seek clarification from the Coalition Government of the intended role of independent members in relation to any "voluntary" Standards Committee which a Local Authority may decide to establish;
 - (b) That the City Solicitor should make representations to the Coalition Government on behalf of the Standards Committee that the Localism Bill should make provision for a Local Authority to have the discretion to appoint independent voting members to any "voluntary" Standards Committee which it may decide to establish;
 - (c) That the City Solicitor should update the Standards Committee regarding progress of those parts of the Localism Bill relating to changes to the current Local Authority Standards regime.
- 1.3 As requested by the Council's Standards Committee, the City Solicitor has written to the Department for Communities and Local Government (DCLG) seeking clarification of the matters referred to at points 1.2 (a) and (b) above.

2. DCLG Impact Assessment: *Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests.*

- 2.1 On 31 January 2011 the DCLG published its Impact Assessment as to the expected costs, benefits and impacts of the Coalition Government's proposals in the Localism Bill to abolish the Standards Board regime, clarify the existing law on predetermination and require the registration and declaration of interests by members and co-opted members of Local Authorities. A copy of the DCLG's impact assessment is attached as Appendix 1 to this Report.
- 2.2 The DCLG's Impact Statement considers the Monetised costs and benefits, Non-monetised costs and benefits, Wider Impacts, and Risks of the Coalition Government's proposals to abolish the current Standards Board Regime. In its analysis of the "Monetised benefits" to Local Authorities, the DCLG's Impact Statement observes that, "The present cost to the local...authorities of upholding the local standards framework is unclear". The DCLG's Impact Assessment therefore takes the figure of £55,000 (which is the estimate given by Tunbridge Wells Borough Council of the cost of operating their standards committee) as a "proxy figure" for the total savings to local authorities of the

abolition of the local standards framework. However, at paragraph 16 of the DCLG's Impact Assessment, the DCLG advises that:

For the purpose of estimating the total benefit to authorities of the policy, it is assumed that in the interest of upholding standards of conduct of their members, authorities will retain at least some aspects of the local standards framework. To do otherwise risks creating an impression amongst local citizens that the authority is not properly committed to upholding standards of conduct of its members, and it is expected that authorities will mitigate this risk by retaining what they consider to be the most valuable aspects of the local standards framework.

This suggests that the DCLG expects that most Local Authorities will decide to adopt some form of "voluntary Code of Conduct" as a way of satisfying the duty imposed on them by Clause 15(1) of the Localism Bill to "promote and maintain high standards of conduct by members and co-opted members" of the Council.

- 2.3 The question of which are the "most valuable aspects of the local standards framework" that Local Authorities may want to retain in order to reassure "local citizens" that they "properly committed to upholding standards of conduct of its members" is left open for individual Local Authorities to determine. The DCLG's Impact Assessment suggests that a key "Non-monetised" benefit of the proposals to abolish the current Standards Board regime is that, "by making councillors accountable for their conduct at the local – not national – level, standards of conduct will more closely reflect the expectations of local citizens".

- 2.4 In assessing the Risks involved in the proposals to abolish the current Standards Board regime, the DCLG's Impact Assessment acknowledges that:

There is a risk that where local authorities decide not to adopt a code of conduct for their councillors, standards of conduct will worsen due to councillors knowing that their conduct will not be investigated by the authority and therefore acting without fear of sanction. There is a further risk attached to the fact that even where authorities decide to adopt a Code of Conduct, councillors will be subject to less severe penalties for verdicts of misconduct than under the present regime.

With regard to those provisions of the current statutory Members' Code of Conduct which deal with conduct related to the register of Members' interests and using the position of Member for personal gain, the DCLG's Impact Assessment considers that:

Risks arising from breaches relating to failures to declare personal or prejudicial interests and using the position to confer an advantage or disadvantage for oneself or others...will be mitigated by the proposed new criminal offence.

As stated in the City Solicitor's Report to this Committee of the 17 January 2011, Clause 18 of the Localism Bill creates a new criminal offence of failure

to register a financial or other interest in accordance with regulations to be made by the Secretary of State ("the Regulations") under Clause 17 of the Localism Bill.

The City Solicitor has contacted the DCLG to ask about the likely timescale for the production of the Regulations required by Clause 17 of the Localism Bill which will specify the "financial and other interests" that are to be registered in the Register of Members' Interests.

- 2.5 Annex 2 to the DCLG's Impact Assessment sets out the DCLG's "assumptions used to estimate the impact on the criminal justice system of the new criminal offence for councillors found to have breached the requirement in the Code of Conduct to register and declare personal and financial interests". The DCLG assumes that complaints that a Member of the Council has failed to comply with the new statutory requirement to register or declare personal interests will be made either to the Council's Monitoring Officer or directly to the police. Where complaints are made directly to the police, the DCLG assumes that "...they will initially pass back to the Monitoring Officer...to investigate and potentially resolve without having to launch a formal investigation". The DCLG suggests that:

Of the total complaints received by Monitoring Officers...relating to this type of offence, it is assumed that around 50 per cent will be dismissed without further action. It is further assumed that around 30 per cent of complaints received by Monitoring Officers...will be resolved locally, without police involvement. This is expected to be possible if for instance the councillor in question agrees in the light of the complaint that he/she does in fact hold a personal interest, be passed on to the police. These figures assume a slightly lower proportion of complaints will be investigated by the police than are currently investigated by local authorities (28 per cent). This is based on the expectation that local authorities will endeavour to resolve complaints locally where possible in order to minimise the impact on the police and criminal justice system.

In practice, there is clearly a difference between the Council's Monitoring Officer resolving locally a complaint about a breach of the current statutory Members' Code of Conduct, and resolving locally a complaint alleging that a Member has committed a criminal offence by failing to register an interest in accordance with the requirements of the Localism Bill. The situation is further complicated by the fact that, since it is the Monitoring Officer who is required by Clause 17 of the Localism Bill to "establish and maintain" the register of Members' interests, the Monitoring Officer would presumably be a prospective "witness for the prosecution" in the event that the police do decide to prosecute. It will therefore be important for Local Authorities to ensure that they establish a system whereby any allegations made to the Monitoring Officer regarding a Member's failure to register an interest are reported (perhaps to a Standards Committee?) in order to demonstrate that the Local Authority has complied with its obligations in respect of Sections 17 and 18 of the Localism Bill.



Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests

Impact assessment



Localism Bill: the abolition of the Standards
Board regime, clarification of the law on
predetermination and the requirement to register
and declare interests
Impact assessment

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Title: Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests Lead department or agency: Department for Communities and Local Government Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: DCLG 0040
	Date: January 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: stephen.mcallister@communities.gsi.gov.uk (Tel. 0303 444 2582).

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The power to judge councillors' behaviour has been taken away from the electorate, undermining democratic accountability at taxpayers' expense, through the system for assessing and investigating complaints about the conduct of members of over 10,000 authorities. These authorities include local authorities, parish and town councils, and police and fire authorities, and anyone can make a complaint. The complaints allege a breach of the Code of Conduct that these authorities have been required to adopt for their elected and co-opted members that must contain the provisions of a centrally prescribed Model Code, and that their members must comply with. For the purpose of this Impact Assessment, members of all these authorities are referred to as councillors.

The Code of Conduct regime has encouraged frivolous and malicious complaints, all of which have to be assessed by standards committees that authorities are required to maintain. As parish and town councils are not required to have standards committees, the "parent" authority has to deal with complaints received about their members at its own expense. Over 6000 complaints were received between May 2008 and the end of March 2010, but after assessment, only 28 per cent were recommended for investigation. Sanctions can include suspension for up to 6 months, depriving constituents of representation. Taxpayers also fund a public body, the Standards Board for England, which monitors the performance of standards committees, investigates the more complex allegations, which are referred to it by the committees, and provides authorities with guidance and training. Further costs fall on the taxpayer through funding the independent tribunal (First-tier Tribunal (Local Government Standards in England)) that deals with appeals against standards committee decisions and cases that may require a heavier sanction than standards committees are able to impose.

Decisions taken by those who have a predetermined view or who are biased may, quite rightly, be quashed by the courts. However, concerns about the issue of predetermination have led to councillors being prevented from speaking or voting on issues simply because they have spoken about them previously or expressed a view. They may even have been elected because of their views on a particular issue. This is an infringement of a councillor's right to hold and express a view and assumes that they are unable to approach and consider an issue with an open mind. The Government wishes to clarify the existing law to ensure that councillors are free to campaign, speak and vote without worrying about being accused of predetermination or bias.

In order to maintain high standards of behaviour by councillors, the existing requirement for councillors to register certain personal interests on a publicly available register will be retained. This requirement ensures that councillors do not put their personal interests above the public interest when dealing with items of council business to which those interests may relate. It provides transparency and will help the electorate to hold councillors to account. A deliberate failure to register and disclose interests will become a new criminal offence, punishable by a fine of up to £5,000, and an order for disqualification.

What are the policy objectives and the intended effects?

The commitment “We will abolish the Standards Board regime” was published in “The Coalition – our programme for government”.

The abolition of the Standards Board regime would fulfil the localism agenda by removing the statutory requirement on authorities to adopt a centrally prescribed Code of Conduct and to maintain standards committees for investigating complaints about councillors’ conduct, and would remove an unnecessary quango and the tribunal determining the fate of councillors. Authorities would be free to decide for themselves whether they wish to adopt a Code of Conduct for their members and on a process for investigating complaints. Councillors would no longer be prevented from speaking and voting on issues they may have expressed an opinion about. The continuation of the requirement for councillors to register their personal interests on a publicly available register will enable the electorate to hold them to account. The new criminal offence for failure to comply with this requirement will act as a deterrent for councillors who seek to put their personal or financial interests above those of the people they were elected to serve.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. This would mean that authorities would continue to be required to adopt a centrally prescribed Code of Conduct for their members and to maintain standards committees to consider all allegations received of breaches of the Code, most of which are rejected for investigation. Councillors would continue to be judged by committees or by unelected officials when it is the right and responsibility of the electorate to hold them to account.

Option 2: Through primary legislation, to abolish the Standards Board regime, to clarify the law on predetermination to ensure that councillors may speak or vote on matters on which they have previously spoken or campaigned, and to maintain high standards of conduct by introducing a new statutory requirement to register and declare certain personal interests on a publicly available register. The statutory requirement is to be reinforced by a new criminal offence where councillors deliberately fail to register or declare interests for personal or financial gain. The interventions related to the abolition of the Standards Board regime and predetermination were announced in the Coalition Agreement. Authorities will be free, if they wish, to adopt a code of conduct for their members and to maintain standards committees to consider allegations of breaches of their code of conduct, but they will not have powers to impose sanctions such as suspension. This is the preferred option.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed as part of the Policy Implementation Review.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No arrangements are in place at present, but we are actively considering how to collect this information.

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: GREG CLARK MP Date: January 2011

Summary: Analysis and Evidence

Policy Option 2

Description: Localism Bill: Abolition of the Standards Board regime, clarification of the law on predetermination, and the requirement to register and declare interests

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 30.0	High: 141.9	Best Estimate: 85.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
High			
Best Estimate		19.6	19.6

Description and scale of key monetised costs by 'main affected groups'

Key monetised costs are those associated with winding up of the Standards Board for England (£19.2m approximately) and First-tier Tribunal (Local Government Standards in England) (£0.4m approximately). These costs will be incurred by the Department for Communities and Local Government (DCLG) and Ministry of Justice as sponsors of the Standards Board for England and First-tier Tribunal (Local Government Standards in England) respectively.

Other key non-monetised costs by 'main affected groups'

There will be an impact on the criminal justice system as a result of the new criminal offence for councillors who abuse their position for personal or financial gain. This impact is expected to be marginal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1	6.3	49.6
High		19.3	161.5
Best Estimate		12.8	105.5

Description and scale of key monetised benefits by 'main affected groups'

Key monetised benefits are savings associated with the present cost of running the Standards Board for England (£6m per annum approximately) and First-tier Tribunal (Local Government Standards in England) (£316,210 per annum). These savings will be made by DCLG and Ministry of Justice as sponsors of the Standards Board for England and First-tier Tribunal (Local Government Standards in England) respectively. In the year of the abolition of the Standards Board for England (2011-12), savings equal to an estimated £1.5m are expected to be made through reduced activity and its closure from the end of December 2011 onwards. Other benefits include savings to local authorities through the abolition of the local standards framework (up to £13m per annum with £6.5m per annum

Other key non-monetised benefits by 'main affected groups'

The key non-monetised benefit is that authorities will be able to decide how best to promote standards of conduct of their members. This will ensure standards of conduct more closely reflect the expectations of local citizens. Clarification of the law of predetermination will strengthen local democracy by encouraging more effective representation by councillors on behalf of their constituents. Authorities may make minor savings through the removal of the present cost of submitting monitoring returns to the Standards Board for England and removal of the present cost of investigating alleged breaches of the requirement in the Code of Conduct to register and declare personal and financial interests.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The total monetised benefit to local authorities is dependent on the approach taken by each authority to upholding standards of conduct once the bill is passed (scenarios are set out in the evidence base). In order to quantify the range of benefits, a proxy – the cost of operating standards committees – is used for the present cost to authorities of the local standards framework (limitations of this approach are set out in the evidence base). For purposes of estimation it is assumed that authorities will retain at least some aspects of the present local standards framework (i.e. those which are considered most valuable) in the name of upholding standards of conduct.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England, and in respect of police authorities only in Wales ¹		
From what date will the policy be implemented?			2011		
Which organisation(s) will enforce the policy?			The authority's Monitoring Officer (or equivalent) will be responsible for maintaining the register of members' interests, but it will be the responsibility of each member to comply with the new statutory requirement. The police will deal with alleged breaches of the statutory requirement and the Director of Public Prosecutions and the court system will deal with members who are to be prosecuted.		
What is the annual change in enforcement cost (£m)?			Not yet known		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

¹ The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. When that Bill is enacted, clause 19 of the Localism Bill will remove police authorities from the "relevant" authorities defined in clause 15 of the Localism Bill.

Specific Impact Tests: Checklist

Set out in the table below where information on any Specific Impact Tests undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	No	14
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	14
Small firms Small Firms Impact Test guidance	No	14
Environmental impacts		
Greenhouse gas assessment	No	14
Wider environmental issues	No	14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	14
Human rights Human Rights Impact Test guidance	No	14
Justice system Justice Impact Test guidance	Yes	14
Rural proofing Rural Proofing Impact Test guidance	No	14
Sustainable development Sustainable Development Impact Test guidance	No	14

² Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Local Government Act 1972, sections 80, 84-98 and 105 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_1
2	Local Government and Housing Act 1989, sections 3A and 3B http://www.legislation.gov.uk/ukpga/1989/42/contents
3	Local Government Act 2000, Part 3 and Schedule 4 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/2000/cukpga_20000022_en_6#pt3-ch1-pb2-l1g53
4	Local Government and Public Involvement in Health Act 2007, section 183 http://www.legislation.gov.uk/ukpga/2007/28/content
5	SI 2007 No.1159: Model Code of Conduct Order http://www.legislation.gov.uk/uksi/2007/1159/contents/made
6	SI 2008 No. 1085: The Standards Committees (England) Regulations http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1972/cukpga_19720070_en_1
7	SI 2009 No.1255: The Standards Committees (Further Provisions) (England) Regulations http://www.legislation.gov.uk/uksi/2008/1085/contents/made
8	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/
9	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Investigations/
10	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Sanctions/
11	http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Sourcesofcomplaint/

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	19.6									
Annual recurring cost										
Total annual costs	19.6									
Transition benefits	1.5									
Annual recurring benefits	6.5	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8
Total annual benefits	8.0	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8	12.8

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Introduction

1. This Impact Assessment relates to the commitment in the “The Coalition – our Programme for Government” to “abolish the Standards Board regime”. The regime comprises a non departmental public body - the Standards Board for England – and the Model Code of Conduct for members of local and other authorities. The new legislation will also will put beyond doubt that members are free to campaign on issues on which they have previously spoken or expressed a view, and to participate in decisions on those issues, provided that they have an open mind and that their interests do not conflict with the public interest. It will also include a new requirement for members of authorities to register and declare their personal and financial interests and a new criminal offence for deliberate failure to comply with this requirement.

Background

2. The current Model Code of Conduct applies to elected and co-opted members of local and other authorities such as police, national park, transport and fire authorities. The Code includes requirements for members to register and declare personal interests, treat others with respect, not use their position to gain an advantage or financial reward, not disclose confidential information, and not do anything to bring their authority into disrepute. A link to the Model Code of Conduct that authorities are required to adopt is given in row 5 of the References table above.
3. The Standards Board for England is an executive non departmental public body sponsored by DCLG, regulating the performance of local authorities in dealing with allegations received about breaches of the Code of Conduct. The Standards Board for England collects data from authorities on the operation of their local standards committees and has powers to direct them to take or not take certain actions. It also investigates some allegations of breaches of the Code of Conduct referred to it by authorities, and can refer them to an independent tribunal (The First-tier Tribunal (Local Government Standards in England)) for determination rather than back to the authority involved. It also provides guidance and advice on the Code of Conduct. The First-tier Tribunal (Local Government Standards in England) deals with cases referred to it for determination where it is considered that a heavier sanction than those available to standards committees may be appropriate, or where a councillor wishes to appeal against a standards committee finding. It has no jurisdiction over any other matters. Over 20 per cent of breaches of the Code of Conduct in the last two years relate to the requirements to register and declare personal and “prejudicial” interests, and to ensure that members do not use their position to secure an advantage for themselves or others known to them. A list of the breaches found may be seen in row nine of the References table above.

The problem under consideration and rationale for intervention

4. An unelected non departmental public body regulating a centrally prescribed conduct regime for councillors is against the principles of localism. The Government considers that the regime has encouraged vexatious and frivolous complaints at a considerable cost to the council taxpayer and central government. Indeed, this view is shared independently. Professors George Jones and John Stewart have noted: ‘The creation of the national Standards Board encouraged the ballooning of minor incidents into inquiries which impose large costs on the accused, and impede parties from settling disputes at a local level’ (*Municipal Journal*, 16 April 2009), and the Committee on Standards in Public Life has commented: ‘The system has generated a large number of apparently minor,

vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many members with accusations hanging over their heads for long periods of time. The centralised system has arguably removed primary responsibility for standards from individual authorities (and members)...Local government is far more constrained by rules governing conduct than any other part of the public sector we have examined. It is therefore ironic, but not at all surprising, that despite the profusion of rules, the lack of clarity about standards has grown' (*Getting the Balance Right – Implementing Standards of Conduct in Public Life*, January 2005, Cm6407, c 3.4, 3.11). Only 28 per cent of complaints received between May 2008 and the end of March 2010 were considered worthy of investigation, but authorities are required to assess all complaints initially.

5. The Government wishes to decentralise power to authorities by allowing them to decide how their members should conduct themselves and what is best for their electorates. The Government therefore intends to abolish the requirement for authorities to adopt a Code of Conduct. When the Code of Conduct is abolished, there will be no need for a national regulator or for the Standard Board for England's other functions. Similarly, there will no longer be a need for an unelected appeals tribunal. However, authorities may, if they wish, adopt a voluntary code of conduct for their members to ensure high standards of conduct of their members. They will also be free to retain their standards committees or to introduce another system for investigating complaints about the conduct of their members. To put beyond doubt that members can speak and participate in decisions about which they have previously spoken or campaigned, the law will clarify the position regarding predetermination so that members are not prevented from representing their constituents. To ensure that high standards of conduct are maintained generally and to provide transparency, the current requirement to register and declare interests will be retained and there will be a new criminal offence for deliberate failure to comply with the requirement to register and declare interests. The introduction of a criminal sanction resulting in a fine and possibly disqualification is expected to have a greater deterrent effect than existing sanctions.

Main groups affected

6. The main groups affected by the policy are as follows:
 - Councillors of local authorities in England and members of other authorities covered by the legislation
 - Local authorities in England and other authorities covered by the legislation
 - Department for Communities and Local Government
 - Ministry of Justice
 - Criminal justice system

Monetised costs

Department for Communities and Local Government (DCLG)

7. As a result of the bill, the Standards Board for England will be abolished. As its sponsoring department, DCLG will incur the costs associated with winding-up of the Standards Board for England. The costs of closure set out in the table below are only indicative.

Specific costs of closure	£ million
Redundancy costs	0.9
Early retirement costs	0.2
Ill health retirement costs previously being spread over 3 years from 10-11	0.4
Dilapidations charges for removal of internal fixtures and fittings	0.4
Business rates on empty office space	0.1
Office rent and leased equipment buy out to the break periods	0.5
Anticipated proceeds from disposal of fixtures, fittings and equipment	-0.04
Potential additional contractual, licence and support costs	0.1
Contingency for currently unforeseen and unavoidable expenditure	0.2
Crystallisation of the pension liability	12.0
Total	14.7

8. In addition to the above closure costs, DCLG will incur the cost of running the Standards Board for England during the year of its planned abolition (2011-12). The indicative figure for the operating budget requirement for the Standards Board for England in 2011-12 is £4.5m.

Ministry of Justice

9. As a result of the Localism Bill, the First-tier Tribunal (Local Government Standards in England) will have no further cases referred to it. As its sponsoring department, the Ministry of Justice will incur the costs of redundancies during the year of its planned abolition (2011-12) if staff cannot be redeployed. Redundancy costs for 2011-12 are estimated at £50,000.
10. In addition to these redundancy costs, the Ministry of Justice will incur the cost of running the First-tier Tribunal (Local Government Standards in England) during the year of its planned abolition (2011-12). Tribunal costs for 2011-12 are estimated at £316,210 for the full financial year.

Monetised benefits

Department for Communities and Local Government (DCLG)

11. As a result of the Localism Bill, the Standards Board for England will be abolished. As its sponsoring department, DCLG make savings through the present cost of running the Standards Board for England. In the year of its abolition (2011-12), savings equal to an estimated £1.5m are expected to be made through reduced activity of the Standards Board for England and its closure from end December 2011 onwards. Thereafter, savings amount to an estimated £6m per annum.

Ministry of Justice

12. As a result of the Localism Bill, the First-tier Tribunal (Local Government Standards in England) will no longer receive any new cases for determination related to the Code of Conduct. As its sponsoring department, the Ministry of Justice will make savings through the removal of the present cost of running the hearings for conduct cases referred to it

and for appeals. Based on estimated tribunal costs for 2011-12, these savings amount to an estimated £316,210 per annum.

Local and other authorities

13. Under the present Standards Board regime, local and other authorities are responsible for upholding standards of conduct of their councillors under the terms of the local standards framework. This includes, for example, the Model Code of Conduct for councillors as well as the requirement for these authorities to operate standards committees. As a result of the Bill, the local standards framework will be abolished. While this will enable authorities to make savings equal to the present cost of upholding the local standards framework, authorities may of their own volition retain certain aspects of the framework if they perceive value in doing so. This would negate the monetary benefits to an authority associated with the abolition of these aspects of the local standards framework.
14. The present cost to local and other authorities of upholding the local standards framework is unclear, as noted by the Standards Board for England.³ A considerable proportion of the overall cost of the framework is likely to be the cost of operating standards committees. Authorities are not obliged to publish details of these costs and hence estimates are largely difficult to obtain. Tunbridge Wells Borough Council indicates on their public website that the cost of operating their standards committee is approximately £55,000 per annum.⁴ Based on the assumption that the activities of standards committees account for the majority of overall costs to authorities of upholding the local standards framework, for estimation purposes this figure is used as a proxy for the total savings to authorities of the abolition of the local standards framework. A notable limitation of this approach is that there is likely to be wide variation in the costs of operating standards committees due to differences in the numbers of complaints dealt with by each standards committee, as well as differences in the number of councillors that each standards committee oversees, especially where there are parish and town councils in the authority's area.
15. Noting these limitations, the table below outlines the estimated benefit to authorities associated with each of the following three scenarios:

Scenario 1:

authorities retain all aspects of the local standards framework ('complete retention')

Scenario 2:

authorities retain some aspects of the local standards framework ('partial retention')

Scenario 3:

authorities retain no aspects of the local standards framework ('non retention')

Scenario	Monetised benefit per local authority ^{1,2}	Monetised benefit (total) ³
1. Complete retention	£0	£0
2. Partial retention	£27,500	£13,007,500
3. Non retention	£55,000	£26,015,000

¹ Proxy used to estimate benefit per local authority of abolition of the local standards framework. See paragraph 14 for explanation and limitations.

² For estimation purposes, the benefits of partial retention are assumed to be half the benefits of non retention.

³ Standards for England (2010), 'Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework', p. 23.

⁴ <http://www2.tunbridgewells.gov.uk/Default.aspx?page=2238>

³ The Standards Board for England states that the total number of standards committees in England is 473.

16. For the purpose of estimating the total benefit to authorities of the policy, it is assumed that in the interest of upholding standards of conduct of their members, authorities will retain at least some aspects of the local standards framework. To do otherwise risks creating an impression amongst local citizens that the authority is not properly committed to upholding standards of conduct of its members, and it is expected that authorities will mitigate this risk by retaining what they consider to be the most valuable aspects of the local standards framework. In reaching this assumption, we have also considered the Standards Board for England's 2010 Review of the Local Standards Framework, which found little support amongst key stakeholders for complete removal of the local standards framework and wide support for reforms to the existing model.⁵
17. On this basis of this assumption, therefore, the total benefit to authorities is estimated at between £0 and £13 million per annum. A figure of £6.5m per annum is considered a best estimate based on this range. The actual figure will be dependent on how many authorities decide to retain aspects of the local standards framework once the Localism Bill is passed.

Non-monetised costs

Criminal justice system

18. To ensure that councillors do not put their personal or financial interests above the wider public interest, they will be required, as under the current regime, to register personal and prejudicial interests and to declare them at meetings. As a result of the Localism Bill, serious misconduct by a councillor through a deliberate failure to register and declare personal interests will become a criminal offence. This will impact on the criminal justice system through investigating and prosecuting allegations of serious misconduct.
19. Annex 2 sets out a number of assumptions used to estimate the volume of cases relating to the proposed new criminal offence that are likely to impact on the criminal justice system. Ministry of Justice officials have indicated that, based on an estimated range of 100 to 300 cases per year initially assessed by the police, the legislative change is likely to have only a marginal, non quantifiable impact on the criminal justice system as a whole, with the exception of an additional number of potentially complex cases to be dealt with.

Non-monetised benefits

Local citizens

20. As a result of the proposed change, local and other authorities will gain the power to decide how best to promote standards of conduct of their elected members. A key benefit of this is that by making councillors accountable for their conduct at the local – not national – level, standards of conduct will more closely reflect the expectations of local citizens.

⁵ Standards for England (2010), 'Local Standards 2.0 – the proportionality upgrade? A review of the local standards framework', p 8.

21. By clarifying the law on predetermination, incumbent councillors will have greater confidence to campaign and represent their constituents. This will ensure that citizens have the ability to influence the representatives they elect to serve them and make councillors more responsive to their concerns, thereby strengthening the process of local democracy.

Local and other authorities

22. One requirement of the local standards framework is for local and other authorities to submit monitoring returns periodically to the Standards Board for England. As a result of the Localism Bill, the Standards Board for England will be abolished. All authorities will as a result make savings through the removal of the present cost of submitting monitoring returns. This represents only a small resource cost to authorities and therefore this saving is not quantified.
23. As a result of the Localism Bill, deliberate failure to comply with the requirement to register and declare personal interests will become a criminal offence. Accordingly, responsibility for investigating and prosecuting these types of offences will be transferred to the police and criminal courts respectively. All authorities will as a result make savings through the removal of the present cost of investigating these types of allegations. It is unclear what proportion of authorities' investigations relate to these types of allegations. Therefore this saving is not quantified.

Wider impacts

Administrative and investigatory costs

24. Local and other authorities occasionally hire external investigators to investigate allegations of misconduct – for example when they do not have the capacity to undertake an investigation themselves, but where the allegation is not serious enough to be referred to the Standards Board for England for investigation. Following the abolition of the Standards Board regime, authorities may spend less on running a system for dealing with complaints about their members and less on services provided by external investigators. Those authorities who decide not to adopt a voluntary Code of Conduct for their members may achieve the greatest reductions in administrative and investigatory costs.
25. Under the present local standards framework, authorities are required to publish an advertisement in a local newspaper when a councillor is found to have breached the Code of Conduct; or when a new member is appointed to the standards committee. Following abolition of the local standards framework, authorities will no longer be subject to this requirement. Authorities are likely to spend less on local newspaper advertisements as a result of the Bill as they could publish the information more cheaply on their websites.

Risks

26. There is a risk that where local authorities decide not to adopt a code of conduct for their councillors, standards of conduct will worsen due to councillors knowing that their conduct will not be investigated by the authority and therefore acting without fear of sanction. There is a further risk attached to the fact that even where authorities decide to adopt a Code of Conduct, councillors will be subject to less severe penalties for verdicts of misconduct than under the present regime. Presently the most serious allegations of misconduct are referred to the First-tier Tribunal (Local Government Standards in England) for investigation, with the associated penalties for verdicts of misconduct greater than those which standards committees are able to impose. Following abolition of

the Standards Board regime, authorities will acquire full responsibility for dealing with allegations of misconduct. In deciding the appropriate punishment for verdicts of misconduct, authorities will be constrained by their existing statutory powers.

27. Based on statistics for the most common breaches of the Code between May 2008 and 31 March 2010, misconduct is most likely to include failing to treat others with respect (30 per cent); conduct related to the register of interests and using the position of councillor for personal gain (28 per cent of cases); and acting in a manner that could reasonably be regarded as bringing the authority into disrepute (20 per cent).⁶ The risks related to the register of interests will be mitigated by the new requirement for councillors to register and declare interests and the new criminal offence (see “Other clauses” section below). Other risks will be mitigated in part, where they are serious enough to involve slander or libel, by the laws of defamation enforced in the civil courts. Risks arising from breaches relating to failures to declare personal or prejudicial interests and using the position to confer an advantage or disadvantage for oneself or others (28 per cent of cases) will be mitigated by the proposed new criminal offence.
28. Risks may arise from breaches related to bullying others or disclosing confidential information, but it would be possible for authorities to put procedures in place to minimise these risks – for example, by having a protocol for member-officer relations and through training. Similarly, breaches involving misuse of resources could be dealt with by the temporary withdrawal of resources or removing a councillor as a member of a committee. Breaches by a councillor of the Code of Recommended Practice on Local Authority Publicity will be mitigated by the ability for a complaint about the misuse of council resources to be referred to the District Auditor for investigation.
29. The Government believes that existing legal frameworks already provide remedies for the most serious types of “misconduct” – e.g. fraud, breaches of the equalities legislation, slander or libel. In addition, Section 80 of the Local Government Act 1972 already provides for councillors to be disqualified if they receive a criminal conviction with a sentence of 3 months or more. Section 80 is to be reviewed to capture any other types of unethical conduct that are considered serious enough to justify disqualification from office.

Other clauses

30. The new requirement to register and declare interests is very similar to the requirement in the existing Code of Conduct. It is therefore considered unnecessary to prepare a separate Impact Assessment for this requirement. The new criminal offence is intended to deter councillors from using their office for personal or financial gain. Annex 2 sets out a number of assumptions used to estimate the impact of the new criminal offence on the criminal justice system, in terms of the expected volume of cases.
31. A separate Impact Assessment has not been prepared for the new clause related to predetermination because its purpose is to clarify the existing law. The clause will enable councillors to speak and campaign without being perceived subsequently as having a predetermined view. It is not possible to quantify the number of councillors that will be affected because no data is available for the number that have been prevented up to now from speaking and campaigning for fear of being accused of having a predetermined view.

⁶ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Investigations/>

28. The potential impact of Policy Option 2 (to abolish the Standards Board regime, to clarify the law on predetermination to ensure that councillors may speak or vote on matters on which they have previously spoken, and to maintain high standards of conduct by introducing a new criminal offence where councillors deliberately fail to register or declare interests for personal or financial gain) on the following areas has been considered, in line with relevant guidance with the following conclusions:

Statutory equality duties – An initial Equalities Impact Assessment screening has been undertaken with the assessment that there would be no impact, apart from the abolition of the Standards Board for England, for which a full Equalities Impact Assessment has been carried out.

Competition – The potential impact has been considered with the assessment that there would be no impact.

Small firms – The potential impact has been considered with the assessment that there would be no impact.

Greenhouse gas assessment – The potential impact has been considered with the assessment that there would be no impact.

Wider environmental issues – The potential impact has been considered with the assessment that there would be no impact.

Health and well-being – The potential impact has been considered with the assessment that there would be no impact.

Human rights – The potential impact has been considered with the assessment that there would be no impact.

Justice system – The potential impact has been considered with the assessment that there will be an impact.

Rural proofing – The potential impact has been considered with the assessment that there would be no impact.

Sustainable development – The potential impact has been considered with the assessment that there would be no impact.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review Plan

A Post Implementation Review should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A Post Implementation Review should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the Post Implementation Review Plan as detailed below. If there is no plan to do a Post Implementation Review, please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The policy objectives are (1) to give local authorities the power to decide how to uphold standards of conduct of councillors; (2) to clarify the existing law on the freedom of councillors to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) to maintain high standards of conduct and to help citizens to hold councillors to account by making a deliberate failure by councillors to register or declare interests a new criminal offence. These objectives will be met once the Localism Bill receives Royal Assent and the provisions have been implemented.

Outputs would reflect (1) actions taken by local authorities to uphold standards of councillors; (2) clarity in the eyes of councillors in regards to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) councillors being sufficiently deterred from abusing their position for personal or financial gain.

Outcomes would reflect wider objectives such as (1) whether local authorities feel empowered by the ability to decide how to uphold standards of councillors; (2) whether councillors feel sufficiently free to campaign/represent their constituents and subsequently speak/vote on the same issues; and (3) whether local citizens have greater confidence in the standards of conduct of councillors.

The proposed Post Implementation Review reflects this distinction. It is intended that longer-term outcomes for local authorities emanating from the introduction of policies within the Localism Bill could be measured through a possible panel of local authorities across the country to understand the impacts and value for money. This would be supplemented by some additional focused research to monitor local people's opinion and experience of the Bill's local democracy policies in action.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review is intended to be a proportionate check that legislation is operating as expected. A focused monitoring exercise will allow an assessment of (1) actions taken by local authorities to uphold standards of councillors; (2) the extent to which councillors perceive greater clarity in regards to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) the number of councillors found guilty of abusing their position for personal or financial gain.

A cross-cutting thematic review will be undertaken of this and other linked policies designed to increase power for communities and better local services, that will allow local authorities – and

central government – to understand the impact of these new policies collectively upon their activities and outcomes achieved.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The approach is two-fold, reflecting both the need for a Post Implementation Review to be proportionate, and also taking advantage of the opportunity to brigade monitoring policies linked to local government and local democracy together with a view to make best use of the scarce resource available (both time and money), but increasing the opportunity for local authorities and the Government to understand the collective impact of these policies:

(a) A focused, proportionate, response to the specific policies around councillor conduct which involves (1) a survey of local authorities to understand the actions taken to uphold standards of councillors; (2) a survey of local councillors to ascertain whether they perceive greater clarity in relation to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) a monitoring exercise to establish the volume of offences committed by councillors relating to deliberate failure to register and disclose interests. Each of these exercises will be undertaken consistent with the Government's plans to consolidate data reporting requirements on local authorities.⁷

(b) A wider, but streamlined, approach to understanding the impact of the policies linked to local government and local democracy under the Localism Bill. A cost-effective way to identify these longer-term impacts might be through a panel of local authorities, convened possibly by DCLG or other third parties, whose purpose is to identify and share experiences and implications of implementing policies across the Localism Bill. Such a panel would seek to be representative of all authorities: geographically, structurally, politically and demographically, and foster shared understanding and learning about the implications of policies, and the opportunities they present to increase local authority effectiveness. This could be supplemented by research on public opinion and experience of the policies' application.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Baselines for measuring outputs are (1) the current (obligatory) arrangements of local authorities for upholding standards of conduct of councillors at the point of the policy's implementation; (2) current perceptions of local councillors of clarity in relation to their freedom to campaign/represent their constituents and subsequently speak/vote on the same issues without fear of being accused of having a predetermined view; and (3) the current number (trend) of councillors found guilty of abusing their position for personal or financial gain. Baselines for measuring outcomes are current perceptions of local councillors and citizens. It is likely that some focused primary research will be required to generate a baseline to measure outputs and outcomes for this policy, particularly around the perceptions of local authorities and councillors. We can work up the details of new baseline research required in the months ahead.

⁷ See section 1.3 of DCLG's Business Plan at:
<http://www.communities.gov.uk/documents/corporate/pdf/1762476.pdf>

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

In regards to upholding standards, success is not judged in terms of the actions taken by local authorities to uphold standards, but whether local authorities feel empowered by the ability to decide how to uphold standards of councillors, and whether they, and their local citizens, consider the new arrangements to be an improvement. In regards to the freedom of councillors to campaign, success reflects the extent to which councillors on the whole perceive greater clarity in the law and have the confidence to campaign and represent their constituents and subsequently speak/vote on the same issues as a result. In regards to the deliberate failure by councillors to register and disclose interests, success reflects not just a fall in the number of offences committed by councillors, but greater confidence among local citizens in the standards of conduct of councillors.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Monitoring arrangements need to be proportionate, but also allow local authorities to understand the impact of policies upon themselves and others in the sector. The proposal for monitoring and measurement is four-fold:

- (a) A survey, by DCLG, of local authorities to ascertain the arrangements in place to uphold standards of councillors
- (b) A survey, by DCLG, of councillors and citizens to understand their attitudes towards the new arrangements for upholding standards, and their perceptions of standards of councillors
- (c) Ongoing monitoring, by DCLG, of the volume of offences committed by councillors relating to deliberate failure to register and disclose interests
- (d) Longer-term review, through a panel of local authorities and focused research on the perceptions and impacts of policies across the Localism Bill among local communities within these local authority areas.

Reasons for not planning a Post Implementation Review: [If there is no plan to do a **Post Implementation Review** please provide reasons here]

N/A.

Annex 2: Assumptions used to estimate the impact on the criminal justice system of the new criminal offence for councillors found to have breached the requirement in the Code of Conduct to register and declare personal and financial interests

1. Number of complaints relating to failure by councillors to register and/or declare personal or financial interests

Statistics from the Standards Board for England show that complaints relating to alleged breaches of the Code of Conduct by councillors totalled 6134 between March 2008 and May 2010.⁸ It is not possible to determine what proportion of these complaints relates specifically to the failure of councillors to register or declare personal interests. During the same period there were 563 found breaches of the Code of Conduct, of which 132 related to the failure of councillors to register or declare interests. Assuming that the proportion of total complaints relating to this type of offence is approximately equal to the proportion of found breaches of this offence (23 per cent), this implies that, over a two year period, around 1500 complaints are made relating to the failure of councillors to register or declare personal interests (750 annually). For the purposes of estimation, a range of 500 to 1500 complaints per year relating to this type of offence is assumed.

2. Cases dealt with by the criminal justice system

Complaints that a member has failed to comply with the new statutory requirement to register or declare personal interests will be made either to the Monitoring Officer (or equivalent) of the authority concerned or directly to the police. While a number of complaints will be made directly to the police, it is assumed that they will initially pass back to the Monitoring Officer (or equivalent) to investigate and potentially resolve without having to launch a formal investigation. Our methodology thus treats the Monitoring Officer (or equivalent) as in effect the first port of call for all complaints relating to the failure of councillors to register or declare personal interests.

Of the total complaints received by Monitoring Officers (or equivalent) relating to this type of offence, it is assumed that around 50 per cent will be dismissed without further action. In reaching this assumption, we have considered statistics from the Standards Board for England that show that 52 per cent of all complaints relating to alleged breaches of the Code of Conduct by councillors were rejected without further action.⁹ It is further assumed that around 30 per cent of complaints received by Monitoring Officers (or equivalent) will be resolved locally, without police involvement. This is expected to be possible if for instance the councillor in question agrees in the light of the complaint that he/she does in fact hold a personal interest, and agrees to register it immediately. The remaining 20 per cent of complaints it is assumed will be passed on to the police. These figures assume a slighter lower proportion of complaints will be investigated by the police than are currently investigated by local authorities (28 per cent). This is based on the expectation that local authorities will endeavour to resolve complaints locally where possible in order to minimise the impact on the police and criminal justice system.

Combining assumptions (1) and (2) implies that a range of 100 to 300 cases a year will be passed on to the police and thence impact on the criminal justice system.

⁸ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/>

⁹ <http://www.standardsforengland.gov.uk/CaseinformationReporting/Localstatistics/Initialassessmentdecisions/>