
**MANCHESTER CITY COUNCIL
REPORT FOR RESOLUTION**

Report to: Standards Committee - 21 November 2011

Subject: Amendments to the Localism Bill: Requirement for authorities to have a code of conduct

Report of: The City Solicitor

Purpose of the Report:

To update the Standards Committee on recent government amendments to the Localism Bill which will require authorities to have a code of conduct.

Recommendations:

To note the contents of this report.

Wards Affected:

All.

Financial Consequences for Revenue Budget:

None.

Financial Consequences for the Capital Budget:

None.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background Documents:

1. Report of the City Solicitor to Standards Committee of 17 January 2011 on The Future of the Standards Board Regime
2. Report of the City Solicitor to Standards Committee of 14 March 2011 on The Future of the Standards Regime – Update

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. As introduced to the House of Commons on 13 December 2010, Chapter 5 and Schedule 4 of the Localism Bill proposed:

- (a) The abolition of the current Standards Board Regime in England that was introduced by the Local Government Act 2000 and which provides for:-
 - A mandatory Model Code of Conduct for members of local authorities;
 - Standards Committees of local authorities;
 - The Standards Board for England; and
 - The jurisdiction of the First Tier Tribunal in relation to local government standards in England;
- (b) The imposition of a statutory duty on local authorities to “promote and maintain high standards of conduct by members and co-opted members”;
- (c) A power for local authorities to decide to adopt a “voluntary code of conduct for Members”;
- (d) that the Secretary of State may make Regulations requiring the Monitoring Officer of a local authority to establish and maintain a “Register of Members Interests” of members and co-opted members;
- (e) that a member or co-opted member of a local authority will commit a criminal offence where they fail to register “a financial or other interest” in accordance with the Regulations to be made by the Secretary of State (or where they fail to disclose such an interest before taking part in business relating to the interest).

1.2 During the passage of the Localism Bill through the House of Lords, a number of significant changes were made to the clauses dealing with standards of conduct of Local Authority members. In particular, on the 27 October 2011 the Government tabled amendments to what is now Chapter 7 of the Localism Bill whereby instead of being permitted to decide whether or not to adopt a “voluntary” code of conduct for elected members, Councils and other “relevant authorities” will be required to adopt a code of conduct for elected members that is consistent with the Nolan Principles of Public Life.

2. Requirement to adopt a code of conduct for members and co-opted members

2.1 As originally drafted, the Localism Bill abolished the current Standards Board Regime in England, and while the Bill imposed a statutory duty on local authorities to “promote and maintain high standards of conduct by members and co-opted members”, there was no requirement for local authorities to adopt a code of conduct for members. The government’s original proposals led to representations from members of the House of Lords, the Association of Council Secretaries and Solicitors, the Law Society, the Society of Local Authority Chief Executives, the Chartered Institute of Public Finance Accountants and the National Association of Local Councils, expressing

concern about the risk of a “free-for-all” in standards of conduct in local government. When the Localism Bill reached its Report stage in the House of Lords, a cross-party group of peers argued that the lack of a mandatory code of conduct for local authority members sent out a message that “standards are discretionary and that they are not a priority”. Concerns were raised that there was risk that “...the authorities that do not take standards seriously will of course be least likely to adopt a code with any kind of rigorous content. That will result in damage not just to the reputation of that particular council but to the reputation of local government as a whole”. It was also argued that the fact that the Localism Bill will devolve more powers to local authorities through changes to the planning regime and the introduction of elected mayors meant that it “is absolutely essential...that the public have confidence in the people who will take responsibility for those powers”.

- 2.2 As a result of the concerns raised in the House of Lords, what are now Chapter 7, and Schedule 4 of the Localism Bill have been amended by the insertion of a new Clause 27(1A) which provides that in discharging its statutory duty to “promote and maintain high standards of conduct by members and co-opted members” a “relevant authority” (which is defined at Clause 27(4) as including county, district and parish councils, as well as fire and rescue authorities, policy authorities and combined authorities such as the GMCA), “must...adopt a code dealing with the conduct that is expected of members...**when they are acting in that capacity**”.
- 2.3 While the Government remains committed to the abolition of the current Standards Board Regime with its requirement for all local authorities to comply with a national code of conduct, Clauses 28(1) and 28(1A) of the Localism Bill now provide that a “relevant authority” must ensure that the code of conduct that it adopts under Clause 27(1A) is:
- (a) “when viewed as a whole, consistent with” the seven Nolan principles of
- selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty;
 - leadership; and
- (b) “includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of -
- pecuniary interests; and
 - interests other than pecuniary interests.”
- 2.4 When the Localism Bill received its Third Reading in the House of Lords on the 31 October, it was suggested by one of the speakers that “the great majority of local authorities will simply keep the code that they all already have.” In the light of the amended Clauses 27(1A), 28(1) and 28(1A), the Council will need to consider whether or not it believes that its current Code of Conduct for

Members (“the Code”) should be retained or whether, on the basis of experience there are amendments that should be made to the current Code.

- 2.5 Clause 27(6) of the Localism Bill provides that where a “relevant authority” operates executive arrangements (as is the case with the Council) then any functions that are conferred on a “relevant authority” by Chapter 7 of the Localism Bill are not to be the responsibility of the Executive. In particular, Clause 28(6) of the Localism Bill expressly states that the function of “adopting, revising or replacing a code of conduct” is a non-executive function, that can only be discharged by the Council.
- 2.6 Clause 28(5) of the Localism Bill provides that a “relevant authority must publicise its adoption, revision or replacement of a code of conduct” to local residents.
- 2.7 Clause 27(1B) of the Localism Bill deals with parish councils, and provides that:
- “A relevant authority that is a parish council –
 - (a) may comply with subsection (1A) by adopting the code adopted by its principal authority, where relevant on the basis that references in that code to its principal authority’s register are to its register, and
 - (b) may for that purpose assume that its principal authority has complied with section 28(1) and (1A).

At present, Ringway Parish Council is the only parish council for which Manchester City Council is the “principal authority”. It will be for Ringway Parish Council to decide in due course whether to adopt the same code of conduct for its members as Manchester City Council.

3. Requirement for arrangements to be made for investigation of allegations

- 3.1 Clause 28(3) of the Localism Bill provides that;

“a relevant authority other than a parish council must have in place –

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions can be made.”

- 3.2 Clause 28(3C) of the Localism Bill provides that:

“In subsections (3) and (3A) “allegation”, in relation to a relevant authority, means a written allegation –

- (a) that a member or co-opted member of the authority has failed to comply with the authority’s code of conduct, or
- (b) that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council’s code of conduct.

Insofar as parish councils are concerned, it therefore appears that it will be for the “principal authority” of a parish council to investigate any allegation that a member of a parish council has failed to comply with the parish’s council’s code of conduct in accordance with the arrangements that the principal authority has put in place under Clause 28(3). The position under the current Standards Board Regime is that two members of Manchester City Council’s Standards Committee are members of Ringway Parish Council, and that if a meeting of the City Council’s Standards Committee (or a sub-committee of the Standards Committee) were to be convened to consider an allegation that a member of Ringway Parish Council had failed to comply with Ringway’s code of conduct, then a member of Ringway Parish Council would have to be present. By contrast, the Localism Bill does not require a member of a parish council to be involved in the “arrangements for investigation” adopted by their “principal council” of an any allegation that a member of a parish council has failed to comply with the parish’s council’s code of conduct. However, if the Council decides to have a “voluntary” Standards Committee, it would seem appropriate to appoint at least one member of Ringway Parish Council to the Committee.

- 3.3 While the Localism Bill has been amended to require “relevant authorities” to adopt a code of conduct for members, there has been no amendment requiring them to retain a Standards Committee. In practice, however, it seems likely that many councils will wish to retain a some form of “voluntary” Standards Committee in order to administer the “arrangements” in relation to investigations into allegations that a member has breached a council’s code of conduct which they will be required to have in place under Clause 28(3) of the Localism Bill.
- 3.4 While the Localism Bill does not require Councils to have a Standards Committee, Clause 28(3A) provides that the Council’s “arrangements” for the investigation of allegations that a member has breached the council’s code of conduct “must include provision for the appointment by the authority of at least one independent person”. Detailed provisions as to who can be appointed as an “independent person” for the purposes of Clause 28 are set out at Clauses 28(3B) and 28(3D), with Clause 28(3B)(c)(ii) providing that anyone who is appointed to act as an “independent person” must have their appointment “approved by a majority of the authority”. In particular, Clause 28(3B)(i) provides that the Council cannot appoint as an “independent person” anyone who is “a member, co-opted member or officer of the authority” (or anyone who has held one of these roles at any time during the five years prior to the date of their intended appointment).
- 3.5 Clause 28(3A) provides that the role of the “independent person” is as follows:
- the views of the “independent person” “are to be sought and taken into account, by the authority before it makes a decision on an allegation it has decided to investigate; and
 - the views of the “independent person” “may be sought:
 - ❖ by the authority in relation to an allegation where the authority has not decided to investigate;

- ❖ by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegations, and
- ❖ by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority if the parish council's principal authority.

3.6 When the role of the "independent person" was discussed on the Third Reading of the Localism Bill in the House of Lords, Baroness Hanham, speaking on behalf of the Government, advised as follows:

"To ensure that there is a strong independent element in these arrangements...a local authority must appoint an independent person through a transparent process and ...where a local authority has investigated an allegation, it must seek the independent person's view before reaching a decision about the allegation. It must then have regard to that view. We believe that this will ensure that there is a check on vexatious or politically motivated complaints.

In addition, we have provided that a person against whom a complaint is made may also seek the views of the independent person. This will ensure that if a councillor feels victimised or pressured by a member or members of the council or the authority, he or she can have access to the independent person for a view."

3.7 The Council will need to consider whether a single "independent person" will be able to provide advice to both any members of the Council whose behaviour is the subject of an allegation that they have breached the Council's code of conduct and also to the Council before it makes its decision on an allegation that it has decided to investigate. It may be that the Council considers that the "dual function" of the "independent person" means that there is a risk of conflict of interest and that it would be preferable to appoint two separate "independent persons" in order to avoid such risk.

4. Register of Members' Interests

4.1 When the Localism Bill was originally submitted to the House of Commons on 13 December 2010, it was envisaged that the Secretary of State would produce regulations that would require the Council's Monitoring Officer to establish and maintain a "Register of Members' interests", and which would set out the "financial and other interests" that would be required to be recorded in this Register. During the progress of the Localism Bill through Parliament, what is now Chapter 7, Clauses 29 to 33 have been expanded to include further detail as to what information will be required to be included in the Register of Member's Interests.

4.2 In particular, the effect of Clause 30(1) is that within 28 days of taking office a member or co-opted member of the Council must notify the Council's Monitoring Officer of any "disclosable pecuniary interest" which they have at date they provide such notification. For the purpose of Chapter 7 of the Localism Bill, Clause 30(3) provides that

“a pecuniary interest is a “disclosable pecuniary interest” in relation to a person (“M”) if it is of a description specified in regulations made by the Secretary of State and either –

- (a) it is an interest of M’s or
- (b) it is an interest of –
 - (i) M’s spouse or civil partner,
 - (ii) A person with whom M is living as husband and wife, or
 - (iii) A person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest”.

4.3 While further detail as to what constitutes a “disclosable pecuniary interest” is to be contained in regulations, it is clear that the definition set out in Clause 30(1) of the Localism Bill is much narrower than the definition of what constitutes a “personal interest” that is set out at paragraph 8(1)(a) of the Council’s current Code of Conduct for Members (“the Code”) and which members are required to register in the Council’s current register of members’ interests in accordance with paragraph 13(1) of the Code. Clause 29(2) of the Localism Bill provides that, so long as a relevant authority complies with the express requirements of Chapter 7 as to registration of “disclosable pecuniary interests” then “it is for a relevant authority to determine what is to be entered in the authority’s register.” It is therefore open to the Council to decide that it wishes to retain the wider registration requirements set out in the Code.

4.4 Under Clause 29(5) of the Localism Bill the Council’s Monitoring Officer is required to ensure that not only is a copy of the Council’s Register of Member’s Interests “available for inspection at a place...at all reasonable hours” as presently, but also that the register is published on the Council’s website, which is not currently the case.

5. Pecuniary interests in matters considered at meetings

5.1 Clause 31 of the Localism Bill sets out the position where either:

- (a) a member or co-opted member has a “disclosable pecuniary interest” in a matter to be considered at a meeting of the Council or any Council Committee (including the Executive); or
- (b) the discharge of a function of the Council has been delegated to a single member of the Council, and the member has a “disclosable pecuniary interest” in any matter to be dealt with by the member in the course of discharging that function.

Where the “disclosable pecuniary interest” referred to at 5.1 (a) above is not already entered on the Council’s Register of Member’s Interests, Clause 31(2) requires the member or co-opted member to disclose the interest to the meeting, and Clause 31(3) requires the member or co-opted member to notify the Council’s Monitoring Officer of the interest within 28 days of the date of disclosure.

- 5.2 Clause 31(4) further requires that where a member or co-opted member has a “disclosable pecuniary interest” in a matter to be considered at a meeting of the Council or any Council Committee, then they may not either:
- participate in any discussion of the matter at the meeting, or
 - participate in any vote taken on the matter at the meeting.

Where the discharge of a function of the Council has been delegated to a single member of the Council and they have a “disclosable pecuniary interest” in a matter to be dealt with in the course of discharging that function, then Clause 31(7) provides that if the “disclosable pecuniary interest” is not already entered on the Council’s Register of Member’s Interests, the member must notify the Council’s Monitoring Officer of the interest within 28 days of becoming aware of it. Clause 31(8) further provides that the member concerned may not take any steps in relation to the matter (except for the purpose of enabling the matter to be dealt with by someone else).

- 5.3 Whilst the Council’s current Code requires members to provide written notification to the Council’s Monitoring Officer “within 28 days of becoming aware of any new personal interest or change to any personal interest” that requires registration on the Council’s register of member’s interests, the Localism Bill does not appear to impose any general requirement on elected members to “update” their entries on the Council’s register of member’s interests. Instead, under the Localism Bill, a member of the Council is only required to “update” the Council’s register of members’ interests where the member is present at a meeting of the Council or any Council committee at which the member has an unregistered “disclosable pecuniary interest” in any matter to be considered at that meeting. In addition, while the Council’s current Code requires members to disclose any “personal interests” that they have in any business of the Council whenever they attend a meeting of the Council at which the business is considered, the Localism Bill does appear not to require members to make a disclosure of any “disclosable pecuniary interest” that they have in any matter to be considered at a meeting of the Council or any Council committee, where that “disclosable pecuniary interest” is registered in the Council’s register of member’s interests. In practice however, Clause 31(4) means that where a member of the Council has either a registered or unregistered “disclosable pecuniary interest” in any matter to be considered at a meeting of the Council or any Council committee, then the member concerned will not be able to participate in any discussion of the matter at the meeting or participate in any vote on the matter at the meeting.
- 5.4 Whilst Clause 31(10) provides that the Council may make standing orders that provide “for the exclusion of a member or co-opted member...from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4) the member or co-opted member may not participate”, Clause 31 does not make it mandatory for a member or co-opted member to withdraw from a meeting in which they have a “disclosable pecuniary interest” (as distinct from not participate). In this respect the provisions of Clause 31 in relation to “disclosable pecuniary interests” are more relaxed than the provisions of paragraph 12 of the Council’s current Code in relation to

“prejudicial interests” (as defined at paragraph 10 and 11 of the Code), which require the member concerned to withdraw from the meeting.

- 5.5 Clause 33 of the Localism Bill sets out the position in relation to the grant of dispensations from the restrictions on participation and voting imposed by Clause 31(4) which are discussed at paragraph 5.1 above. Under the current Standards Regime and the Standards Committee (Further Provisions (England) Regulations 2009, it is the Council’s Standards Committee that can grant dispensations for members allowing them to speak and vote at a meeting when they have a “prejudicial interest” as defined under the Council’s present Code. As the Localism Bill repeals the provisions of the Local Government Act 2000 that require local authorities to have a Standards Committee, Clause 33 provides that it is the “relevant authority” that “may, on a written request made to the proper officer of the authority by a member of the authority, grant a dispensation relieving the member or co-opted member from either or both the restrictions in Clause 31(4) in cases described in the dispensation. If the Council does decide to retain some form of “voluntary” Standards Committee, then the Council may wish to consider delegating its function of granting dispensations to the Standards Committee.

6. Sanctions

- 6.1 The Localism Bill abolishes the current Standards Board Regime in England (and thereby removes the various sanctions, such as disqualification or suspension of a member from the relevant authority for a period of up to 12 months that are currently available to the First-tier Tribunal, and suspension of a member for a period of up to 6 months that are currently available to the Council’s Standards Committee). Clause 34 however, creates a series of new criminal offences where a member or co-opted member fails to comply with their obligations in relation to the registration of “disclosable pecuniary interests” under the Localism Bill. The offences (for which a person who is found guilty is liable on summary conviction to a fine not exceeding level 5 (or £5,000) on the standard scale) are as follows:

- A person commits an offence if, without reasonable excuse, the person
 - (a) fails to comply with an obligation imposed on the person by section 30(1) (notification of “disclosable pecuniary interests” to Monitoring Officer on taking office) or 31(2) (disclosure of unregistered “disclosable pecuniary interest” to a meeting), 31(3) (notification of unregistered “disclosable pecuniary interest” to Monitoring Officer following disclosure to a meeting) or 31(7) (notification by “single member” responsible for the discharge of a Council function of an unregistered “disclosable pecuniary interest”),
 - (b) participates in any discussion or vote in contravention of section 31(4), or
 - (c) takes any steps in contravention of section 31(8) (requirement for a “single member” responsible for the discharge of a Council function not to take further steps where the member has a “disclosable pecuniary interest).

- A person commits an offence if under section 30(1) or 31(2), 31(3) or 31(7) the person provides information that is false or misleading and the person –
 - (a) knows that the information is false or misleading, or
 - (b) is reckless as to whether the information is true and not misleading.
- 6.2 In addition to a fine, Clause 34(4) provides that a court dealing with a person for an offence under Clause 34 may order the disqualification of a person from being or becoming a member or co-opted member of both any “relevant authority” for a period of up to five years.
- 6.3 Clauses 34(5) to 34(7) provide that a prosecution for an offence under Clauses 34 can only be instituted by or on behalf of the Director of Public Prosecutions. While proceedings for an offence may be brought within a period of 12 months beginning with the date on which sufficient evidence to warrant the proceedings came to the prosecutor’s knowledge, no such proceedings may be brought more than three years after the commission of the offence.
- 6.4 At the Third Reading of the Localism Bill in the House of Lords, Baroness Hanham, speaking on behalf of the Government, raised the issue of what sanctions would be available to a council where a member had not committed a criminal offence that came within the scope of Clause 34 of the Localism Bill, but had nevertheless been found on investigation to have acted in breach of the council’s code of conduct for members adopted under Clause 28. Baroness Hanham advised that:
- “Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the standards board regime.”
- 6.5 It is to be noted that where the Council decides that a member has failed to comply with the Council’s code of conduct, then the Localism Bill does not grant the Council the power to suspend the member concerned from the Council itself. Suspension or removal of a member from Council Committees or the Executive would require the co-operation of the political groups on the Council and/or the Leader of the Council as appropriate.

7. Timescale for Introduction of the Localism Bill

- 7.1 It is currently anticipated that the Localism Bill is likely to receive its royal assent within the next few days.
- 7.2 The sections of the Localism Bill that deal with the abolition of the current Standards Regime are to be brought into force on a day to be appointed by the Secretary of State by way of order. Until the relevant sections of the Localism Bill are brought into force the current statutory framework remains operative. There are transitional provisions in the Localism Bill which deal with the position in relation to any ongoing cases that are being investigated by Standards for England as at the date when the current Standards Regime is abolished.