

# Notice of Meeting

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## **Standards Committee and Standards Committee Hearing Panel**

**Tuesday, 1st May, 2012 at 10.00 am**  
in Members' Board Room Council Offices  
Market Street Newbury

Date of despatch of Agenda: Thursday 26 April 2012

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045  
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Further information and Minutes are also available on the Council's website at  
[www.westberks.gov.uk](http://www.westberks.gov.uk)



**To:** John Bingham (Vice-Chairman), Adrian Edwards, David Holtby,  
Peter Iveson, Mollie Lock, Gwen Mason, Geoff Mayes, James Rees  
(Chairman), Tony Renouf, Andrew Rowles, Mauline Akins, Chris  
Bridges, Richard Hudspith and Mike Wall

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# Agenda

<b>Part I</b>	<b>Page No.</b>
1. <b>Apologies</b> To receive apologies for inability to attend the meeting (if any).	
2. <b>Minutes</b> To approve as a correct record the Minutes of the meeting of this Committee held on 28 November 2011.	1 - 4
3. <b>Declarations of Interest</b> To receive any Declarations of Interest from Members.	
4. <b>Annual Report of the Standards Committee 2011/12</b> To Present the Annual Standards Committee report to the Standards Committee prior to presentation to Full Council.	5 - 14
5. <b>Revised Standards Arrangements - Localism Act 2011</b> Following the introduction of the Localism Act major changes are required to the regulation of conduct for members and members of the Parish Councils. This report outlines the changes and recommends actions from the Council to agree.	15 - 54

Andy Day  
Head of Strategic Support

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Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

**STANDARDS COMMITTEE AND STANDARDS COMMITTEE HEARING PANEL**

**MINUTES OF THE MEETING HELD ON  
MONDAY, 28 NOVEMBER 2011**

**Councillors Present:** Mauline Akins, John Bingham (Vice-Chairman), Chris Bridges, Adrian Edwards, David Holtby, Richard Hudspith, Mollie Lock, Gwen Mason, Geoff Mayes, James Rees (Chairman), Tony Renouf and Mike Wall

**Also Present:** David Holling, Sarah Clark and Moira Fraser

**Apologies for inability to attend the meeting:** Crissy Clemson and Peter Iveson

**PART I**

**13. Declarations of Interest**

Councillor David Holtby declared that he might have an interest in Agenda Items 3 and 4 and reported that, as his interest might be personal and prejudicial, he would be leaving the meeting during the course of consideration of the matter.

**14. Request for a Dispensation from Streatley Parish Council**

*(Councillor David Holtby declared that he might have a personal and prejudicial interest in Agenda item 3 by virtue of the fact that an Angela Bulmer was known to him as a contributor to the Conservative Party. As his interest might be personal and prejudicial he left the meeting and took no part in the debate or voting on the matter).*

*(note: after the meeting Councillor Holtby informed Officers that he had established the Angela Bulmer that he referred to at the meeting was not the parish councillor that had requested a dispensation)*

The Committee considered a report (Agenda Item 3) concerning a request for a dispensation from six Streatley Parish Councillors concerning a piece of freehold land recently purchased by the Parish Council. The Standards Committee was required to consider the request in order to ensure that it was carrying out its duties as set out in the The Standards Committee (Further Provisions) (England) Regulations 2009 that came into force on the 15<sup>th</sup> June 2009.

Officers explained that written applications for dispensations were received from six members (Brian Baldwin, Nicola Swan, Angela Bulmer, Mark Kibble, Nicola Rogers and Sue Crowther) of Streatley Parish Council on 28 November 2011. Streatley Parish Council consisted of eight parish councillors. Officers noted that no applications were received from Alan Clark or Ian Helmschrott-Bowden, and therefore recommended that if the dispensation was granted, the dispensation should not be afforded to them.

**STANDARDS COMMITTEE AND STANDARDS COMMITTEE HEARING PANEL - 28  
NOVEMBER 2011 - MINUTES**

Officers explained that the reasons for the requests put forward in the applications was to allow the parish councillors to take part in discussions, including potential planning applications, relating to the land which the parish council had recently purchased freehold of at future parish meetings. Without the dispensation, the Parish Council would be unable to consider matters concerning this piece of land. It was claimed that this would impair the democratic process as it would preclude more than half of the parish councillors from taking part in the debate under the Code of Conduct.

Officers noted that the parish councillors had requested that the dispensation should be for them to speak and vote on the applications and that they sought a dispensation for four years, the maximum time permitted.

The Standards Committee accepted that the Parish Councillors would have prejudicial interests in this item as the matter might affect the Parish Council's financial interests, the matter might relate to a regulatory matter i.e. planning and a member of the public, who knew the relevant facts, might reasonably think the personal interest was so significant that it was likely to prejudice the Councillors judgement of the public interest. Having a prejudicial interest would require the parish councillors to withdraw from a meeting and they would not be able to vote on the matter.

The Standards Committee therefore also accepted that without the dispensation any meetings where the matter was being discussed would not be quorate and therefore agreed to grant the dispensation to those parish councillors that had requested one.

In relation to the length of the dispensation the Standards Committee agreed with the Officer's recommendation to restrict this until the 01 April 2012 in accordance with the changes that would arise from the introduction of the Localism Act.

**RESOLVED that:**

- 1. a dispensation be granted to all six of the named individuals (Brian Baldwin, Nicola Swan, Angela Bulmer, Mark Kibble, Nicola Rogers and Sue Crowther) to speak and vote on issues pertaining to this piece of freehold land.**
- 2. the Clerk to inform all attendees at meetings where this matter is discussed, prior to the item being debated, that a dispensation has been granted by the Standards Committee and that this must be recorded in the minutes.**
- 3. the dispensation be granted until 01 April 2012 (to take cognisance of the introduction of the Localism Act)**

**15. Request for a Dispensation from Streatley Parish Council**

*(Councillor David Holtby declared that he might have a personal and prejudicial interest in Agenda item 3 by virtue of the fact that an Angela Bulmer was known to him as a contributor to the Conservative Party. As his interest might be personal and prejudicial he left the meeting and took no part in the debate or voting on the matter).*

*(note: after the meeting Councillor Holtby informed Officers that he had established the Angela Bulmer that he referred to at the meeting was not the parish councillor that had requested a dispensation)*

The Committee considered a report (Agenda Item 4) concerning a request for a dispensation from six Streatley Parish Councillors concerning the sale of land (The Old Quarry) s all the councillors were the only trustees of the Charity which owned the land. The Standards Committee was required to consider the request in order to ensure that it

**STANDARDS COMMITTEE AND STANDARDS COMMITTEE HEARING PANEL - 28  
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was carrying out its duties as set out in the The Standards Committee (Further Provisions) (England) Regulations 2009 that came into force on the 15<sup>th</sup> June 2009.

Officers explained that written applications for dispensations were received from six members (Brian Baldwin, Nicola Swan, Angela Bulmer, Mark Kibble, Nicola Rogers and Sue Crowther) of Streatley Parish Council on 28 November 2011. Streatley Parish Council consisted of eight parish councillors. Officers noted that no applications were received from Alan Clark or Ian Helmschrott-Bowden, and therefore recommended that if the dispensation was granted, the dispensation should not be afforded to them.

Officers explained that the reasons for the requests put forward in the applications was to allow the parish councillors to make decisions relating to the sale of the Old Quarry at future meetings. Without the dispensation, the Parish Council would be unable to consider matters concerning the sale of this piece of land. It was claimed that this would impair the democratic process as it would preclude more than half of the parish councillors from taking part in the debate under the Code of Conduct.

Officers noted that the parish councillors had requested that the dispensation should be for them to speak and vote on the matter and that they sought a dispensation for four years, the maximum time permitted.

The Standards Committee accepted that the Parish Councillors would have prejudicial interests in this item as the matter might affect the Parish Council's financial interests and a member of the public, who knew the relevant facts, might reasonably think the personal interest was so significant that it was likely to prejudice the Councillors judgement of the public interest. Having a prejudicial interest would require the parish councillors to withdraw from a meeting and they would not be able to vote on the matter.

The Standards Committee therefore also accepted that without the dispensation any meetings where the matter was being discussed would not be quorate and therefore agreed to grant the dispensation to those parish councillors that had requested one.

In relation to the length of the dispensation the Standards Committee agreed with the Officer's recommendation to restrict this until the 01 April 2012 in accordance with the changes that would arise from the introduction of the Localism Act.

**RESOLVED that:**

- 1. a dispensation be granted to all six of the named individuals (Brian Baldwin, Nicola Swan, Angela Bulmer, Mark Kibble, Nicola Rogers and Sue Crowther) to speak and vote on issues pertaining to the sale of this piece of land at future meetings;**
- 2. the Clerk to inform all attendees at meetings where this matter is discussed, prior to the item being debated, that a dispensation has been granted by the Standards Committee and that this must be recorded in the minutes.**
- 3. the dispensation be granted until 01 April 2012 (to take cognisance of the introduction of the Localism Act)**

*(The meeting commenced at 6.35 pm and closed at 6.45 pm)*

**STANDARDS COMMITTEE AND STANDARDS COMMITTEE HEARING PANEL - 28  
NOVEMBER 2011 - MINUTES**

**CHAIRMAN** .....

**Date of Signature** .....

# Agenda Item 4.

<b>Title of Report:</b>	<b>Standards Committee Annual Report 2011/12</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	10 May 2012
<b>Forward Plan Ref:</b>	C2455

**Purpose of Report:** To present the Annual Standards Committee report to the Council.

**Recommended Action:**

1. Members are requested to note the content of the report.
2. Report to be circulated to all Parish/ Town Councils in the District for information.

**Reason for decision to be taken:** There is no decision. The Council is encouraged to produce an annual report.

**Other options considered:** None

**Key background documentation:** None

The proposals will also help achieve the following Council Strategy principle:

**Empowering people and communities**

The proposals contained in this report will help to achieve the above Council Strategy principle by:

Ensuring that the activity of the Standards Committee be reported back to all District/Town and Parish Councils

<b>Portfolio Member Details</b>	
<b>Name &amp; Telephone No.:</b>	Councillor Graham Jones - Tel (01235) 762744
<b>E-mail Address:</b>	gjones@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	12 <sup>th</sup> April 2012

<b>Contact Officer Details</b>	
<b>Name:</b>	Moira Fraser
<b>Job Title:</b>	Democratic and Electoral Services Manager
<b>Tel. No.:</b>	01635 519045
<b>E-mail Address:</b>	mfraser@westberks.gov.uk

## Implications

- Policy:** None
- Financial:** There are no financial implications associated with production of the annual report.
- Personnel:** None
- Legal/Procurement:** In accordance with Guidance issued by Standards for England in its role as strategic regulator under the Local Government Act 2000 (as amended).
- Property:** None
- Risk Management:** None
- Equalities Impact Assessment:** Not required as there is no decision to be made.

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

# Executive Report

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## 1. Introduction

- 1.1 The Local Government Act 2000 required Councils to set up a Standards Committee. Standards Committees have a proactive role in creating an ethical framework which governs the relationship between high standards of conduct and transparency and openness in decision making. As a result of the Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008, the Standards Committee has continued with the local assessment of complaints made against District and Parish Councillors.
- 1.2 West Berkshire Council's Standards Committee's ambition continued to be to "promote, educate and support Councillors (both District and Parish) in following the highest standards of conduct and ensuring that those standards are fully owned locally."
- 1.3 The introduction of the Localism Act 2011 in November 2011 will significantly affect the future operation of the Standards Committee after the 01 July 2012.
- 1.4 This report will seek to look back at activity of the Standards Committee over the previous year.

## 2. Foreword from the Chair

- 2.1 *To be included*

## 3. Members of the Committee

- 3.1 The Standards Committee is composed of three independent Members, six District Councillors, and six Parish Councillors (this includes three substitutes to ensure continuity).

## 4. Independent Members

- 4.1 The purpose of independent members is to help increase public confidence in ethical standards and provide a clear signal that the Standards Committee is fair. Independent Members also bring a wider perspective to the Standards Committee from outside experiences. Independent Members are not Members or Officers of the Council, and are not actively engaged in local party political activity. They were appointed by the Full Council at the May 2011 annual meeting.

### 4.2 **James Rees**

James Rees has many years' experience of business in a variety of roles. The majority of these have been in general management both at national and international level.

Originally a pharmacist, organic chemist and pharmacologist he then entered the pharmaceutical industry. After wide experience with several multinational companies he became a Corporate VP with Syntex responsible for total business activities in a large group of markets including the U.K., Benelux, Scandinavia,

Eastern Europe, Greece, Turkey and Israel, Anglophone Africa and the Indian sub-continent.

With his wealth of experience in science based and other enterprises James Rees offers a broad range of management and business skills.

He also has extensive experience as a management consultant specialising in business performance improvement.

Assignments have included:

- \* Chairmanships of various companies.
- \* Company acquisitions and sales.
- \* Market investigation and development.
- \* Public Relations.
- \* Strategic Planning.
- \* General business guidance.

James is a Fellow of the Royal Pharmaceutical Society, a Fellow of the Chartered Institute of Management, a Fellow of the Institute of Directors and a graduate of the Harvard Business School.

James Rees has been the Chairman of the West Berkshire Council Standard's Committee since its inception.

#### **4.3 John Bingham**

John Bingham joined the Standards Committee in 2006 as an Independent Member. John previously was the Town Centre Manager for Wokingham in East Berkshire following many years owning and running a restaurant in the town. He was also very active locally being a member of the Wokingham Society and very involved with the Winter Carnival in the town. Shortly after joining as an Independent Member he became Vice Chairman of the Standards Committee.

#### **4.4 Mike Wall**

Mike Wall was appointed to the Standards Committee in 2008. He also serves on The Thames Valley Police Authority Standards Committee and The Thames Valley Police Misconduct Panel as an Independent Member. He has spent many years working in Retail, Distribution and Marketing. In 1988 he was appointed to the Reading Magistrates Bench and continues that service to local justice.

### **5. District Councillors**

5.1 The Councillors on the Standards Committee are representatives of both political groups within the Council. The Standards Committee is neutral, this is because the Standards Committee is above party politics and its Members have the respect of the whole authority, regardless of their political party.

5.2 During 2011/12 the Standards Committee comprised the following Members:

- Adrian Edwards
- David Holtby
- Mollie Lock

- Gwen Mason
- Andrew Rowles
- Geoff Mayes

5.3 The Standards Committee has a special responsibility to the 56 Town and Parish Councils within the District. It is responsible for ensuring that high standards of conduct are met within the parishes and that all Parish and Town Councillors are aware of their responsibilities under the Code of Conduct. Three Parish Councillors are therefore appointed to the Committee. West Berkshire Council has also appointed three substitutes to the Committee to ensure continuity. Parish Councillors bring a wealth of experience and local knowledge to the Committee and also provide insight into the management and organisation of Town and Parish Councils.

5.4 During the 2011/12 Municipal Year the following Parish Councillors were appointed to the Standards Committee:

- Crissy Clemson
- Peter Iveson
- Tony Renouf

5.5 The following parish Councillors were appointed as substitutes during the 2011/12 Municipal Year

- Richard Hudspith
- Chris Bridges
- Mauline Akins

## **6. The Monitoring Officer**

6.1 In West Berkshire Council the role of the Monitoring Officer is a statutory post and rests with the Head of Legal Services. The Monitoring Officer has a key role in promoting and maintaining standards of conduct.

6.2 As well as acting as legal adviser to the Standards Committee, the Monitoring Officer carries out the following functions:

- reporting on contraventions or likely contraventions of any enactment or rule of law and reporting on any maladministration or injustice where the Ombudsman has carried out an investigation;
- establishing and maintaining registers of Members' interests and gifts and hospitality;
- maintaining, reviewing and monitoring the Constitution;
- advising Members on interpretation of the Code of Conduct;
- supporting the Standards Committee;
- receiving reports from Ethical Standards Officers and decisions of case tribunals;

- conducting investigations into misconduct;
- performing ethical framework functions in relation to Parish Councils;
- acting as the proper officer for access to information;
- making arrangements for relevant matters to be considered by the Standards Committee with regard to initial assessment, review, consideration of final investigation reports and hearings, and to advise the Standards Committee on such matters;
- advising whether Executive decisions are within the policy framework; and
- advising on vires issues, maladministration, financial impropriety, probity, and budget and policy issues to all Members.

## **7. The Standards Committee**

7.1 The general functions of the Standards Committee are:

- Promoting and maintaining high standards of conduct by Members and co-opted Members; and
- Assisting Members and co-opted Members to observe the Code of Conduct.

7.2 The terms of reference for the Committee are:

- Promoting, monitoring and reviewing the rules controlling the behaviour of Councillors and Officers (Code of Conduct);
- To initially assess and review complaints against West Berkshire Councillors and Parish and Town Councillors in West Berkshire and to decide what action (if any) to take;
- To consider the results of any investigation into the behaviour of Councillors and decide whether their behaviour has broken the rules described above. If the Councillor is found to have broken the rules, the Committee decides what sanction to impose;
- To provide advice and guidance to Members, Parish Councillors and Officers and to make arrangements for training them on standards issues; and
- To advise the Council about changes which need to be made to the Code of conduct for Members and Officers and to promote, monitor and review these codes.

7.3 Each of the Standards Committee's Sub Committees (Assessment Sub-Committee, Review Sub-Committee, Consideration and Hearing Panel and Hearing Panel) also have their own Terms of Reference which are available on request from the Democratic and Electoral Services Manager.

## **8. The Work of the Committee 2011 – 2012**

- 8.1 ***Promoting, monitoring and reviewing the Codes of Conduct.*** The Standards Committee exists to promote and maintain high standards of conduct within the Council. The Committee continues to assess and amend its policies and procedures on an annual basis to take cognisance of examples of good practice and any amendments to legislation.
- 8.2 During the 2011/12 Municipal Year the Standards Committee hosted one training event for District and Parish Councillors in October 2011 on the Code of Conduct. Additional training sessions were also given to individual Parish Councils upon request.
- 8.3 The Monitoring Officer also attended the District/Parish Conference on the 07 March 2012 to provide District, Town and Parish Councillors with information pertaining to the Localism Act 2011 in relation to the New Standards Arrangements.
- 8.4 Although the Standards Committee is no longer required to submit quarterly reports to Standards for England confidential quarterly reports continue to be provided to the members of the Committee so that they can monitor progress of individual complaints.

## **9. Local Assessment of Complaints**

- 9.1 Since June 2008, the Standards Committee has had responsibility for initially assessing and reviewing complaints against West Berkshire Councillors and Parish and Town Councillors in the West Berkshire area. The introduction of the Localism Act 2011 will however mean that significant changes will be made to the governance arrangements, processes and procedures associated with the local determination of complaints after the 01 July 2012.
- 9.2 During 2011/12 Municipal Year the Standards Committee has assessed eleven cases (six complaints were made against Parish/ Town Councillors and five were made against District Councillors) and reviewed five of these. Of these eleven complaints the Assessment Sub-Committee ruled that in six cases no further action should be taken, two cases should be investigated and in three cases other action was requested. This included the request that that a letter of apology or explanation be written or updates be made to a Members' Register of Interests.
- 9.3 The Consideration and Hearing Panel has not met to consider reports produced by the external investigator. Although two complaints have been referred for investigation the external investigator has not yet been able to complete the reports as the related complaints are also the subject of a police investigation. Advice on how to proceed with these complaints given the timescales imposed by the enactment of the Localism Act 2011 has been sought from the Department for Communities & Local Government's Local Government Standards Team
- 9.4 No cases were referred to Standards for England, before its demise in January, 2012 for investigation which they could be based on their seriousness.

## **10. Raising awareness of the Local Assessment Process**

10.1 Every authority was required to publish a notice detailing where the complaints about the behaviour of Councillors should be sent from 8th May 2008 and what Council's new responsibilities are.

10.2 The Standards Committee chose to do so through the following media;

- Council's website – by inclusion of information on how to make complaints about misconduct.
- The Committee also created an information leaflet for potential complainants and a specific complaints form, which is available via the Council's website and distributed in hard copy when requested.

## **11. Training and Guidance for Members of the Sub-Committees**

11.1 During the 2011/12 Municipal Year Members of the Standards Committee received additional training through the general sessions held for District and Parish Councillors. Additional training on dealing with the future revised procedures for dealing with local determination of complaints has also been held.

## **12. Providing Guidance and Training**

12.1 The Standards Committee has a special responsibility for ensuring that Members are trained in matters relating to the Code of Conduct and arranging for appropriate training to be provided. The Committee will oversee training on the revised procedures for determination of local complaints.

## **13. Relationship with Parish and Town Councils**

13.1 The Standards Committee has sought to develop its relationship with the Parish and Town Councils in the West Berkshire area during this Municipal Year. Joint working and training continues to be undertaken with BALC (Berkshire Association of Local Councils).

## **14. Issues for 2012 – 2013.**

14.1 The Localism Act 2011 was enacted on 15th November 2011 and it has resulted in fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils. The issues that will arise from the introduction of the act and the arrangements that will be put in place to deal with the revised requirements are set out in the report titled Revised Standards Arrangements – Localism Act 2011 also included on this agenda.

## **15. Conclusion**

15.1 The number of complaints in West Berkshire remains relatively low. The training and support given by the Committee and officers to district, parish and town Councillors has contributed to this. The workload which has arisen under the determination regime has enabled all members of the Standard Committee to gain a wider range of experience and expertise which again contributes to the high standard of conduct and behaviour in the district.

## **16. Equalities Impact Assessment Outcomes**

16.1 There is no decision to be made and therefore no Equality Impact Assessment has been undertaken.

### **Appendices**

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There are no Appendices to this report.

### **Consultees**

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**Local Stakeholders:** Standards Committee

**Officers Consulted:** Andy Day, David Holling, Sarah Clarke

**Trade Union:** Not consulted

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<b>Title of Report:</b>	<b>Revised Standards Arrangements - Localism Act 2011</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	10th May 2012
<b>Forward Plan Ref:</b>	C2457

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**Purpose of Report:**

Following the introduction of the Localism Act major changes are required to the regulation of conduct for members and members of Parish Councils. This report outlines the changes and recommends actions for the Council to agree.

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**Recommended Action:**

Standards Committee recommends to full Council that:

1. The terms of reference of a Standards Committee are amended and the provisions of Article 9 of the Constitution are adopted by full Council.
2. In order to assist in the promotion and maintenance of high standards of conduct the Council adopts the Code of Conduct set out in Appendix 2 to this report.
3. Should the DCLG have not issued on or before 1st July 2012 a definition of 'disclosable pecuniary interest' and other pecuniary and non-pecuniary interests then the current Code of Conduct arrangement remain in place until such time as assessment of the definition has taken place. Following assessment by the MO and Standards Committee the MO be given delegated authority to amend the Code of Conduct at Appendix 2 and issue it to all members of the Council and Parish Councils and advise them of the effective date of operation.
4. Training is provided for the Council and Parish Councils on the new Code of Conduct and the proposed arrangements both prior to and post adoption by the Council of a new Code of Conduct.
5. Council appoint a Standards Committee subject to the proportionality arrangements comprising six members together with two co-opted Parish Representatives in accordance with the terms of reference set out at Article 9 of the Council's Constitution (as amended).
6. Further the Council appoints an Advisory Panel in accordance with the terms of Article 9 which shall provide advice on and deal with complaints and process and report to the Standards Committee.
7. Council adopts the "arrangements" set out in paragraphs 5 to 11 of this report and outlined in Appendix 4 and that the operation of these arrangements are reviewed after one year by

Standards Committee in order to assess their effectiveness.

8. The Monitoring Officer be authorised to advertise for the position(s) of Independent Person(s) and that a panel comprising Chairman and three other members of Standards Committee be set up to shortlist and interview candidates before making a recommendation to Council for appointment of Independent Person(s).
9. The Independent Person(s) receive(s) an allowance of £1,000.00 and that this is reviewed following operation of the new standards arrangements after 12 months.
10. The Monitoring Officer is given delegated authority to set up and maintain a Register of Interests made available for inspection and to be placed upon the Council's website.
11. The Monitoring Officer write to all Parish Councils within West Berkshire advising them of their requirement to provide details of relevant interests and that Parish Clerks be asked to set up a Register of Interests which is forwarded to the Monitoring Officer before being placed upon the West Berkshire website.
12. In accordance with the matters outlined at paragraph 18 of this report that Rules of Procedure of the Council Executive and other committees are amended to make it clear that a member must withdraw from a meeting during the consideration of any item of business in which he/she has a disclosable pecuniary interest (except where he or she is permitted to remain as a result of a grant of dispensation) and that the Monitoring Officer be given delegated authority to make appropriate changes to any other sections of the constitution affected.
13. The process regarding dispensations set out in Appendix 5 to this report are adopted by the Council.

**Reason for decision to be taken:**

To ensure that the Council complies with the requirements of the Localism Act 2011 (Chapter 7 - Sections 26 to 34 and Schedule 4) by 1st July 2012.

**Other options considered:**

Not Applicable.

**Key background documentation:**

Localism Act 2011 and guidance/directions/regulations issued by Department for Communities and Local Government.

The proposals will also help achieve the following Council Strategy principles:

**Empowering people and communities**

**Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

The proposals are necessary in order for the Council to comply with the legislative framework introduced by the Localism Act 2011.

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Anthony Stansfeld - Tel (01488) 658238 Councillor Graham Jones – Tel (01235) 762744
<b>E-mail Address:</b>	astansfeld@westberks.gov.uk gjones@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	12 April 2012/14 <sup>th</sup> April 2012

Contact Officer Details	
<b>Name:</b>	David Holling
<b>Job Title:</b>	Head of Legal Services
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## Implications

**Policy:** In accordance with the Localism Act 2011 the Authority has to introduce new "arrangements" which will enable it to achieve its duty of promoting and maintaining high standards of conduct for its elected and co-opted members. In order to achieve this the existing arrangements have to be revised and updated and a new Code of Conduct introduced subject to the issue and implementation of appropriate regulations through the Department of Communities and Local Government.

**Financial:** The revised arrangements for dealing with complaints and other matters in connection with the revised standards regime will be delivered using existing resources. There will be a cost in respect of advertising for the post(s) of Independent Persons and potential payments to each individual. The Independent Person does not fall within the scheme of members allowances will need to be determined by the Council but without reference to the Independent Remuneration Panel. It is estimated this will incur a cost in the region of £6,000.00 p.a.

**Personnel:** It is anticipated that support and other aspects of the implementation and future management of standards will be delivered within existing resources.

**Legal/Procurement:** The provisions of the Localism Act have to be brought into effect by 1st July 2012. There is a potential for this to be delayed as it is dependent upon the Department of Communities and Local Government issuing regulations determining disclosable pecuniary and other interests.

**Property:** Not Applicable

**Risk Management:** Options for the introduction of the new Code of Conduct and arrangements are covered in the report. Legislation does provide that the existing Code of Conduct may continue until such time as the new Code (with reference to disclosable pecuniary and other interests) can be defined. This will be covered by extending the period of operation of the existing Code subject to transitional provisions being enacted.

**Equalities Impact Assessment:** See Appendix A. The provisions in the report revises existing internal and external governance arrangements under the new Act. The new Code of Conduct incorporates principles of respect for others and accountability which are unchanged from the previous arrangements.

**Corporate Board's Recommendation:** The report to be considered by Standards Committee and Council at the Annual Meeting.

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

# Executive Summary

---

## 1. Introduction

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation and promotion of standards of conduct for elected and co-opted members of Councils and Parish Councils. The provisions subject to implementation of Regulations issued by the Department of Communities and Local Government have to be brought into effect by 1st July 2012. The legislation enables certain functions to be delegated to committees or officers and overall the arrangements are less prescriptive with the Council being enabled to introduce a more flexible system of governance.
- 1.2 The Council has to 'promote and maintain high standards of conduct' and the constitution relating to Standards Committee will require alteration (Appendix 1).
- 1.3 A revised Code of Conduct will be necessary (Appendix 2).
- 1.4 The Council has to appoint a Standards Committee and it is recommended that for transparency an Advisory Panel feeds into the Committee dealing with complaints which have been investigated. The Committee will be proportionate and the Panel made up of Independent, District and Parish representatives.
- 1.5 In order to deal with complaints the Council has to devise 'arrangements' which are outlined in the diagram at Appendix 4.
- 1.6 The Council has to appoint an 'Independent Person' who will be consulted by the Monitoring Officer early in the process of review of complaints.
- 1.7 A Register of 'disclosable pecuniary interests' will be set up for the Council and the Council will hold similar Registers for all parishes within the District.
- 1.8 In certain circumstances dispensation can be given allowing members to partake in debate notwithstanding that they have a disclosable pecuniary interest. A process is set out at Appendix 5.

## 2. Proposals

- 2.1 The terms of reference of a Standards Committee are amended and the provisions of Article 9 of the Constitution are adopted by full Council.
- 2.2 In order to assist in the promotion and maintenance of high standards of conduct the Council adopts the Code of Conduct set out in Appendix 2 to this report.
- 2.3 Should the DCLG have not issued on or before 1st July 2012 a definition of 'disclosable pecuniary interest' and other pecuniary and non-pecuniary interests then the current Code of Conduct arrangement remain in place until such time as assessment of the definition has taken place. Following assessment by the MO and Standards Committee the MO be given delegated authority to amend the Code of Conduct at Appendix 2 and issue it to all members of the Council and Parish Councils and advise them of the effective date of operation.

- 2.4 Training is provided for the Council and Parish Councils on the new Code of Conduct and the proposed arrangements both prior to and post adoption by the Council of a new Code of Conduct.
- 2.5 Council appoint a Standards Committee subject to the proportionality arrangements comprising six members together with two co-opted Parish Representatives in accordance with the terms of reference set out at Article 9 of the Council's Constitution (as amended).
- 2.6 Further the Council appoints an Advisory Panel in accordance with the terms of Article 9 which shall provide advice on and deal with complaints and process and report to the Standards Committee.
- 2.7 Council adopts the "arrangements" set out in paragraphs 5 to 11 of this report and outlined in Appendix 4 and that the operation of these arrangements are reviewed after one year by Standards Committee in order to assess their effectiveness.
- 2.8 The Monitoring Officer be authorised to advertise for the position(s) of Independent Person(s) and that a panel comprising Chairman and three other members of Standards Committee be set up to shortlist and interview candidates before making a recommendation to Council for appointment of Independent Person(s).
- 2.9 The Independent Person(s) receive(s) an allowance of £1,000.00 and that this is reviewed following operation of the new standards arrangements after 12 months.
- 2.10 The Monitoring Officer is given delegated authority to set up and maintain a Register of Interests made available for inspection and to be placed upon the Council's website.
- 2.11 The Monitoring Officer write to all Parish Councils within West Berkshire advising them of their requirement to provide details of relevant interests and that Parish Clerks be asked to set up a Register of Interests which is forwarded to the Monitoring Officer before being placed upon the West Berkshire website.
- 2.12 In accordance with the matters outlined at paragraph 18 of this report that Rules of Procedure of the Council Executive and other committees are amended to make it clear that a member must withdraw from a meeting during the consideration of any item of business in which he/she has a disclosable pecuniary interest (except where he or she is permitted to remain as a result of a grant of dispensation) and that the Monitoring Officer be given delegated authority to make appropriate changes to any other sections of the constitution affected.
- 2.13 The process regarding dispensations set out in Appendix 5 to this report are adopted by the Council.

### **3. Conclusion**

- 3.1 The Localism Act brings about a fundamental change to the way in which standards will in future be approached by local authorities. It is apparent that until the definition of disclosable pecuniary interests is finally issued by the Department for Communities and Local Government the extent of the change and potential impact through criminal processes will not be fully known. However as the Council has to introduce these changes by 1st July 2012 it is necessary that the proposals set out in this report are progressed as speedily as possible with delegated authority given

to the Standards Committee in order to ensure that relevant changes are incorporated as soon as possible.

- 3.2 It is unfortunate that the new arrangements do not make better use of existing independent members with the experience they have accumulated over the last ten years but it is anticipated that the new arrangements will provide for swifter administration of the complaints process

# Executive Report

---

## 1. Introduction

- 1.1 The Localism Act 2011 was enacted on 15th November 2011 and it makes fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils. The provisions regarding standards are contained in Chapter 7 of the Act (Sections 26 to 34 and Schedule 4). Initially the implementation date for the standards proposals was 1st April 2012 but guidance from the Department for Communities and Local Government (DCLG) in early January put back the implementation date to 1st July 2012. It is proposed that the changes will be approved by Council at its Annual General Meeting in May.
- 1.2 The report describes the changes and recommends various actions which the Council must approve. The legislation does enable certain functions to be delegated to committees, sub-committees or to officers. Overall the revised arrangements are less prescriptive and the Council has the opportunity to introduce a more flexible system of governance in regard to standards.

## 2. Duty to promote and maintain high standards of Conduct

- 2.1 The Council by virtue of Section 27(1) has a duty "to promote and maintain high standards of conduct" this has not changed from the previous arrangements. It applies to all elected and co-opted members of the Council and to members and co-opted members of Parish Councils who fall within the authority's area.
- 2.2 As the Localism Act introduces a number of changes to the format and operation of Standards Committee, the Standards Committee Task Group has considered the provisions of Article 9 of the Constitution and Council is asked to adopt the revised terms of reference set out in Appendix 1.
- 2.3 In order to assist in the promotion and maintenance of high standards of conduct the Council also has to adopt a Code of Conduct which outlines the behaviour of what is expected of members when they are acting in their capacity as a member of the Council. The Task Group of Standards Committee considered a variety of options and attached at Appendix 2 of this report is a draft Code of Conduct.

## 3. The Code of Conduct

- 3.1 Under the new Act the general principles and the model of Code of Conduct the Council adopted and revised previously are repealed and members are no longer required to give an undertaking to comply with the revised Code of Conduct.
- 3.2 The new Code when viewed as a whole must be consistent with the following seven principles:-
  - \* Selflessness
  - \* Integrity
  - \* Objectivity
  - \* Accountability
  - \* Openness

- \* Honesty
- \* Leadership.

- 3.3 The Council has discretion as to what it includes within its new Code provided it is consistent with the above seven principles.
- 3.4 Regulations, yet to be made require the registration and disclosure of what will be known as "disclosable pecuniary interests" (DPIs). These equate broadly to the current prejudicial interests although the definition is awaited under regulations to be issued by DCLG. In addition there will be a need for the Code to contain appropriate requirements for the registration and disclosure of other pecuniary interests and non-pecuniary interests. As a result the draft Code at Appendix 2 reflects the current state of play and will require a further update once the regulations are issued and the definitions made available.
- 3.5 It is recommended that the existing Code of Conduct remains in place until such time as the definition of disclosable pecuniary interests is available following which the new Code will be implemented and reference to the previous Code discounted.
- 3.6 It is therefore suggested that when the disclosable pecuniary interests regulations are published the Monitoring Officer in consultation with the Standards Committee add to the draft Code provisions which are considered to be appropriate for the registration and disclosure of interests other than DPIs together with the definition of disclosable pecuniary interests.
- 3.7 In view of these changes and in particular the need for members to be fully apprised of registration and disclosure of disclosable pecuniary interests it is considered that the Monitoring Officer provides training to both district and parish members both prior to and post implementation of the new arrangements depending upon when the Regulations are issued.

#### **4. Standards Committee**

- 4.1 The Localism Act 2011 repeals Section 55 of the Local Government Act 2000 which provided for the current statutory Standards Committee. There is under the new legislation no requirement for a Standards Committee but there remains a need to deal with standards issues and case work. It is considered that the Council should appoint a Standards Committee as a committee of Council to deal with the "standards arrangements" as required by the Act. This is considered appropriate otherwise each matter relating to a standards complaint or promotion of standards of conduct would have to be considered on an individual basis by full Council.
- 4.2 Under the 2011 legislation the composition of the Standards Committee is governed by proportionality arrangements. The current co-opted independent members will cease to hold office but the Act establishes a new category of independent persons (see below) who must be consulted at various stages of the process. Legislation provides that existing co-opted independent members cannot serve as independent persons for a period of five years. New "independent persons" may be invited to attend a meeting of Standards Committee but cannot be co-opted on to the committee.
- 4.3 West Berkshire Council will continue to have responsibility for dealing with complaints against elected and appointed members of Parish Councils but there is

no need for a current parish member to sit on the new Standards Committee. The current Parish Council representatives on Standards Committee cease to hold office once the new regime is in place.

- 4.4 The Task Group set up by Standards Committee has considered the position of the Standards Committee and the involvement of independent and parish members. Whilst the current legislation excludes independent members from sitting on Standards Committee as well as Parish Council representatives the Task Group considered that an advisory body should be set up which would recommend actions particularly as regards complaints relating to the Code of Conduct to a proportionally established Standards Committee. This Advisory Panel would operate outside Council's normal committee structure. A Standards Committee (together with sub-committees if required) based upon the terms of reference set out in Appendix 1 and comprising six members appointed proportionally would be the formal body with delegated authority from full Council. It is suggested that from a public perspective two co-opted representatives from Parish Councils will also sit on this committee but would be non-voting.
- 4.5 The Advisory Panel comprising eight members being currently two members of the administration, two members of the Opposition, two Parish and two Independent members and be chaired by an independent member. It would make recommendations to Standards Committee particularly as regards complaints and investigations. Attached at Appendix 3 is a copy of a report considered by Standards Committee Task Group dealing with this aspect of the future arrangements for standards.

## **5. Dealing with Complaints - "Arrangements"**

- 5.1 The Act requires that the Council adopts "arrangements" for dealing with complaints for alleged breaches of the Code of Conduct both by District Council members and by Parish Council members. Any complaint under the terms of the legislation can only be dealt with in accordance with such "arrangements". As a result the process must be set out in detail together with the actions which may be taken against the member who has been found to have failed to comply with the relevant Code of Conduct.
- 5.2 Unlike the previous process which came under criticism the Act repeals the need for assessment, review and hearings sub-committees and will enable the Council to establish a more streamlined process in order to attempt to deal with any complaints as swiftly as possible. The Council will need to delegate appropriate powers to Standards Committee and also to the Monitoring Officer.
- 5.3 Attached as Appendix 4 is a diagram outlining the processing of complaints under the 2011 Act.

## **6. Decision whether to investigate a complaint**

- 6.1 As part of the new regime it is proposed that all complaints are received by the Monitoring Officer who has delegated authority and take an initial decision on whether a complaint requires investigation. It is recommended that the Monitoring Officer, prior to discussion with the Independent Person seeks clarification or additional information from the complainant and the person complained about in order to satisfy themselves and subsequently the Independent Person that a valid

and legitimate complaint exists. This decision will be subject to consultation with the independent person and if necessary an ability to refer particular complaints to the Standards Committee for example, where the Monitoring Officer considers it would be inappropriate for him to take a decision if he has previously advised a member or the complainant on a particulate matter. At this stage if additional information is required this could be sought from the complainant and the member complained against after which a decision would be made. It also offers the opportunity for the complaint to be resolved informally before taking a decision on whether the complaint merits formal investigation.

- 6.2 In order to ensure that the process is working effectively it is proposed that the Monitoring Officer make a quarterly report to Standards Committee which would set out the number and nature of complaints received and draw to the Committee's attention to areas where training or other action might avoid further complaints in the future. It also provides a means of updating the Committee on the progress of investigations together with any costs incurred.
- 6.3 At this stage there are potentially three types of decision which could arise. Firstly, that no further action be taken in respect of the complaint; secondly, that an informal resolution has been achieved by the Monitoring Officer (in consultation with the independent person); and finally possible criminal conduct has been identified in which case the matter is referred to the Director of Public Prosecutions and/or the Police. If this occurs the particular complaint would be closed from a Council perspective.

## **7. Breach Identified**

- 7.1 If following an initial assessment by the Monitoring Officer a potential breach of the Code is identified then it may be appropriate for the matter to be referred to an independent investigator to review. Following the investigation if the investigator concludes there is no breach of the Code then no further action would occur. Alternatively, the investigation may reveal evidence of breach and having seen the investigator's report the subject member may recognise that his or her conduct was at least capable of giving offence or identify other appropriate action. In such case the Monitoring Officer may wish to agree a local resolution but only after consultation with the independent person and provided that the complainant is satisfied with the outcome. A summary report of the outcome would be sent to Standards Committee on a quarterly basis.

## **8. Evidence of Failure**

- 8.1 In cases where formal investigation finds evidence of a failure to comply with the Code of Conduct then a local hearing would be required in which case the Advisory Panel would be called to deal with this aspect. The hearing panel would consist of at least one independent member, two District Councillors and one Parish representative. On reviewing the investigators report representations from the member and complainant a decision would be formulated by the Advisory Panel and it would make a recommendation to the Standards Committee. The Standards Committee would make a formal decision based upon evidence received from the Advisory Panel.
- 8.2 The purpose of using the Advisory Panel would be to ensure that the public perception of the investigatory process is open and transparent and would avoid

suggestions that Standards Committee which is a proportionate body was not proceeding in an unbiased manner.

## **9. Actions in response to failure to comply/Sanctions**

9.1 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension. Requirements for training or an apology from members may be possible as part of the overall requirement to 'promote and maintain high standards of conduct'. As a result there is a limited range of actions which the authority can take but such actions must be directed to securing the continued discharge of its functions to promote and maintain high standards of conduct. The following options appear to be available and have been considered by Counsel in the light of the potential human rights impact on subject members:-

- (i) A formal letter to the member from the Chairman of Standards Committee indicating the failure to comply with the Code.
- (ii) Removal of a member from a particular committee which can only be achieved in consultation with the Group Leader of the members' party.
- (iii) Formal censorship motion via Council initiated by the Chairman of Standards Committee.
- (iv) A formal press release sanctioned by Standards Committee summarising the breach.
- (v) A local resolution acceptable to the complainant and member and sanctioned by Standards Committee.

## **10. The Parish Council position**

10.1 Whilst the Council has to deal with any breaches of the Code arising from the actions of Parish Council members or co-opted members the Localism Act gives the Standards Committee no power other than to make a recommendation to the Parish Council on action to be taken in respect of that member. However, the Task Group has considered the matter and feels that a requirement by the Parish Council to acknowledge receipt of its findings at a full Council meeting which is formally minuted and request that it resolves to take appropriate action by:-

- (i) Means of publicity
- (ii) Outlining the behaviour which shows that the member acted in breach of that Parish Council's Code of Conduct.

would give adequate prominence to the matter.

10.2 Following the District Parish Conference at which the new arrangements were outlined it was suggested that the Monitoring Officer write to all Parish Councils following approval of the draft Code by Council offering it as a basis for implementation of the new regime by them. This will avoid the potential difficulty of a large number of different codes being implemented in each Parish Council throughout the District.

## **11. Appeals**

11.1 Under the previous regime if a member disagreed with the findings of the Standards Committee there was an appeal to the First Tier Tribunal. The Localism Act does not require any appeals mechanism against decisions of Standards Committee to be put in place. However the decision would be open to Judicial Review by the High Court if it was patently unreasonable or if taken improperly or it sought to impose sanctions which the Council had no power to impose.

## **12. Independent Person(s)**

12.1 With regard to the arrangements adopted by the Council it must also include provision for the appointment by it of at least one Independent Person.

12.2 The Independent Person must be appointed through the process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council (that is not just those present and voting at the time the matter is considered).

12.3 The person is not considered to be "independent" if:-

- (a) He is or has been within the last five years an elected or co-opted member or officer of the Council or of any Parish Council's within this area. This also applies to committees or sub-committees of the various Councils.
- (b) He is a relative or close friend of the current elected or co-opted member or officer of the Council or any Parish Council within its area or of any elected or co-opted member of any committee or sub-committee.
- (c) The definition of relative means "the candidate's spouse, civil partner, grandparent etc".

## **13. Functions of the Independent Person**

13.1 They must be consulted by the Council (Monitoring Officer) before any finding as to whether the member has failed to comply with the Code of Conduct or decides to take any action in respect of that member.

13.2 They may be consulted by the Council in respect of a standards complaint at any other stage; and

13.3 They may be consulted by a member or co-opted member of the Council or of a Parish Council against whom a complaint has been made.

13.4 This may cause some difficulties as it would be inappropriate for an Independent Person who had been consulted by a member against whom a complaint has been made and who might as a result be regarded as prejudiced in respect of that particular matter, particularly if the Independent Person is then consulted on the determination of that complaint.

## **14. How many Independent Persons?**

14.1 The Act gives direction to appoint "one or more" Independent Persons but provides that each Independent Person must be consulted before a decision is taken on a

complaint which has been investigated. It would appear therefore that the Council would need to appoint one Independent Person with a number of reserves in order to avoid a conflict situation arising during a complaints process.

## **15. Remuneration**

- 15.1 An Independent Person is not a member of the authority and does not come within the scheme of members allowances. The level of remuneration can therefore be determined without reference to the Independent Remuneration Panel.
- 15.2 At this stage it is not easy to assess the involvement and frequency of reference to the Independent Person but he will be required to be available for consultation by the Monitoring Officer against whom a complaint has been made and potentially as regards local resolution of complaints.
- 15.3 Currently independent members of the Standards Committee receive an allowance in the sum of £1,000.00. It is proposed that the Independent Person receive a similar allowance but that this is reviewed following operation of the new standards arrangements for at least twelve months.
- 15.4 It is proposed that the Monitoring Officer advertise a vacancy for the appointment of one Independent Person and two reserve Independent Persons in order to ensure that the arrangements operate effectively. In addition a panel comprising the Chairman and three other members of Standards Committee be set up to shortlist and interview candidates and to make a recommendation to Council for appointment of an Independent Person.
- 15.5 The Monitoring Officer has drafted an advert which has been approved by the Task Group and it is proposed that the Head of Finance authorise appropriate expenditure in regard to the advert which will also be placed in a newspaper and on the Council's website.

## **16. The Register of Members' Interests**

- 16.1 The Localism Act abolishes the concepts of personal and prejudicial interests and regulations will define "disclosable pecuniary interests" as mentioned above. The Monitoring Officer is required to maintain a Register of Interests which must be available for inspection and also available on the Council's website. In addition the Monitoring Officer is also responsible for maintaining the Register of Parish Council interests which have to be open for inspection at the Council's offices and have to be listed on the Council's website. If a Parish Council operates a website then the Register will also have to appear on that website.
- 16.2 As mentioned above until the regulations dealing with "disclosable pecuniary interests" are issued it will not be possible to determine the content of the register or to include such a definition in the Code of Conduct. It is expected that the DPs will be broadly equivalent to the current definition of prejudicial interests and whilst the intention was to simplify the registration requirement as the Act extends registration to cover not just the members own interests but also those of a members spouse, civil partner or someone living with the member there could be a more complex arrangement required.

16.3 The Berkshire Heads of Legal Services are producing a Register of Interests in order to ensure consistency across the county. It is suggested that the Council adopts such a document and that it is offered to Parish Councils as well.

## **17. Registration on Election**

17.1 Each elected member or co-opted member must register all DPIs within 28 days of becoming a member of the Council. To fail to do so is made a criminal offence under the terms of the Localism Act. The duty to ensure registration of all DPIs is necessary on reappointment and it is suggested that the Monitoring Officer write to all members on a six monthly basis reminding them of their duty to keep their register of DPIs up-to-date. To fail to do so will in future be a criminal offence likely to be prosecuted by the Police. It is therefore imperative that members ensure all disclosable pecuniary interests are reviewed and updated regularly.

17.2 The preparation and operation of a register not just for this Council but also for each parish is likely to be a considerable administrative task but there is no provision for the Council to recover any costs from parish councils. In order to lessen this burden the Monitoring Officer is to write to all Parish Clerks advising them of the duties of Parish Councillors under the new Act as and when the Disclosable Pecuniary Interests Regulations are issued.

## **18. Disclosure of Interests and withdrawal from meetings**

18.1 As mentioned above DPIs would appear to be broadly equivalent to prejudicial interests and therefore the duty to disclose and withdraw from meetings arises when a member attends any meetings of the Council or committee and is aware that he/she has a DPI. Where these conditions are met the member must disclose the interest to the meeting but in a change to current requirements the member does not have to make such a disclosure if he or she has already registered the DPI or has at least sent off a request to the Monitoring Officer to register it (" a pending notification").

18.2 If a member makes a disclosure of a DPI at a meeting must then it must be notified to the Monitoring Officer within the next 28 days in order that it can be placed on the Register of Interests.

18.3 If a member has a disclosable pecuniary interest in any matter he/she must not (a) participate in any discussion on the matter at the meeting, (b) participate in any vote on the matter (unless a member has obtained a dispensation allowing him/her to speak and/or vote).

18.4 The requirement to withdraw from the meeting is included in the draft Code of Conduct at paragraph 6 (disclosure and participation). In order to ensure that compliance with the Code and withdrawal from participation in relevant meetings it is recommended that the Rules of Procedure of the Council, Executive and other committees are amended to make it clear that a member must withdraw from the meeting during the consideration of any item of business which he/she has a disclosable pecuniary interest except where he or she is permitted to remain as a result of the grant of a dispensation.

18.5 Under the Council's Constitution certain decisions can be made by individual decision and in such instances where the individual member has a disclosable

pecuniary interest he or she must not take any action in respect of the matter under consideration other than to refer it to another person or body to make that decision.

## **19. Sensitive Interests**

19.1 The Localism Act effectively re-enacts the existing Code of Conduct provisions on sensitive interests. Where a member is concerned that disclosure of detail of an interest (either a DPI or any other interest which he or she may be required to disclose) at a meeting or in the Register of Members Interests and to which would lead to the member or a person connected with him or her being subject to violence or intimidation a member may request a Monitoring Officer agree that the interest is a "sensitive interest". If following consideration the Monitoring Officer agrees the member merely has to disclose the existence of an interest not the detail of it at a meeting. The Monitoring Officer can also exclude the detail of the interest from the public version of the register if he considers it appropriate to do.

## **20. Dispensations**

20.1 The provisions on dispensations are significantly changed under the Localism Act. The Standards Committee Task Group considered the revised arrangements and a process is attached as Appendix 5.

20.2 In essence there are now five categories in which a dispensation can be granted which are as follows:-

- (i) That so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. In practice this means the decision making body would be inquorate as a result.
- (ii) That without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (iii) That the authority considers that the dispensation in the interests of persons living in the authority's area.
- (iv) That without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (v) That the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent it is (iii) above.

20.3 A major change from previous legislation is that the Localism Act gives a discretion for this power to be delegated to the Standards Committee or a sub-committee or to the Monitoring Officer. Previously the Standards Committee had to deal with any applications for dispensation. Under the current legislation it is considered the grounds (i) and (iv) are objective and that these should be delegated to the Monitoring Officer with an appeal to Standards Committee if required. The

remaining grounds are all the more complex and subjective and the discretion to grant dispensations on these grounds will remain with Standards Committee after consultation with the Independent Person if it is considered necessary.

## **21. Conclusion**

- 21.1 The Localism Act brings about a fundamental change to the way in which standards will in future be approached by local authorities. It is apparent that until the definition of disclosable pecuniary interests is finally issued by the Department for Communities and Local Government the extent of the change and potential impact through criminal processes will not be fully known. However as the Council has to introduce these changes by 1st July 2012 it is necessary that the proposals set out in this report are progressed as speedily as possible with delegated authority given to the Standards Committee in order to ensure that relevant changes are incorporated as soon as possible.
- 21.2 It is unfortunate that the new arrangements do not make better use of existing independent members with the experience they have accumulated over the last ten years but it is anticipated that the new arrangements will provide for swifter administration of the complaints process.

## **Appendices**

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- Appendix A – Equality Impact Assessment – Stage 1
- Appendix 1 - Terms of Reference - Article 9 of the Constitution
- Appendix 2 - Draft Code of Conduct
- Appendix 3 - Composition of Standards Committee
- Appendix 4 - Processing of complaints: Code of Conduct - Localism Act 2011
- Appendix 5 - Dispensations under the Localism Act 2011

## **Consultees**

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- Local Stakeholders:** Standards Committee Task Group (Standards Committee)
- Officers Consulted:** Andy Day Moira Fraser Sarah Clarke
- Trade Union:** Not consulted

## APPENDIX A

### Equality Impact Assessment – Stage One

<b>Name of item being assessed:</b>	Revised Standards Arrangements
<b>Version and release date of item (if applicable):</b>	v2
<b>Owner of item being assessed:</b>	David Holling
<b>Name of assessor:</b>	David Holling
<b>Date of assessment:</b>	23rd March 2012

<b>1. What are the main aims of the item?</b>
To introduce a new and revised Code of Conduct and arrangements for dealing with complaints against Councillors and Parish Councillors in the District.

<b>2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation)</b>
---

<b>Group Affected</b>	<b>What might be the effect?</b>	<b>Information to support this.</b>
Members of Council	Code to reflect the seven principles incorporated in the Localism Act 2011	
Parish Council Members	Reflects proportionality and respect/accountability	

<b>Further comments relating to the item:</b>

<b>3. Result (please tick by clicking on relevant box)</b>
<input checked="" type="checkbox"/> <b>High Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/> <b>Medium Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/> <b>Low Relevance</b> - This needs to undergo a Stage 2 Equality Impact Assessment
<input checked="" type="checkbox"/> <b>No Relevance</b> - This <b>does not</b> need to undergo a Stage 2 Equality Impact Assessment

**For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.**

<b>4. Identify next steps as appropriate:</b>	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	
Stage Two not required:	

**Name:** David Holling

**Date:** 23rd March 2012

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## **2.9 Article 9 - The Standards Committee**

(Part 7 also refers)

### **2.9.1 Composition**

The Standards Committee will be composed of:

- six District Councillors, only one of whom may be a Member of the Executive; this cannot include the Executive Leader; together with two co-opted Parish Representatives.

### **2.9.2. Advisory Panel**

- The Standards Committee shall be supported by an Advisory Panel of eight members comprising 2 members of the administration, 2 members of the opposition, 2 parish council representatives and 2 independent members (who shall not be Independent Persons)
- The Advisory Panel shall be responsible for dealing with complaints where evidence of breach of the Code has been identified and shall report its findings to Standards Committee for formal decision.
- The Advisory Panel shall be chaired by an Independent Member

### **2.9.3. Independent Person(s)**

An Independent Person(s) shall be appointed by the Council and shall be consulted by it before any decision is made to investigate an allegation against any member of the Council. The Independent Person may be consulted by any member or Parish Council member against whom an allegation is made. The Independent Person(s) shall not chair the Standards Committee or be entitled to vote on matters before it.

### **2.9.4. Role and Function**

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- (b) assisting the Councillors and co-opted Members, to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors and co-opted Members on requirements relating to interests set out in the Members' Code of Conduct;
- (g) ensuring arrangements are in place under which allegations of misconduct in respect of the members' Code of Conduct can be investigated and to review such arrangements appropriately;
- (h) the exercise of (a) to (g) above in relation to the Parish / Town Councils wholly or mainly in its area and the Members of those Parish / Town Councils;

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**DRAFT**  
**CODE OF CONDUCT FOR MEMBERS OF**  
**[WEST BERKSHIRE DISTRICT COUNCIL]**

**1. INTRODUCTION**

- 1.1. This Code of Conduct was adopted by the Council at its meeting on May 2012 pursuant to the Localism Act 2011 and its duty to promote and maintain high standards of conduct by members and co-opted members of the Council.

**2. APPLICATION**

- 2.1. This Code of Conduct applies to you as a member of this Council when you are acting or purporting to act in your role as a member and you have a responsibility to comply with the provisions of this Code.

- 2.2. This Code of Conduct is consistent with and based upon the following principles:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The above terms are expanded at the end of this Code under the heading 'The Principles'.

- 2.3. Should a complaint be made against you in your role as a Councillor it will be dealt with in accordance with the Localism Act 2011 and its supporting regulations.

## DRAFT

**3. GENERAL OBLIGATIONS**

When acting or purporting to act in your role as a member of the Council, you must have regard to the following obligations. If you are not acting in your role as Councillor then no breach of the Code is likely to occur:

**RESPECT**

- 3.1. Treat members, officers, members of the public and service providers with courtesy and respect and do not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.

**BRIBERY ACT 2010**

- 3.2. Ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council.

**DISCLOSURE OF INFORMATION**

- 3.3.1. Do not disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature.
- 3.3.2. You may disclose such information where:-
- (i) you have the consent of a person authorised to give it
  - (ii) you are required to do so by law
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice
  - (iv) the disclosure is reasonable and in the public interest
  - (v) is made in good faith and in compliance with the reasonable requirements of the Council or “its professional advisers”.

## DRAFT

ACCESS TO INFORMATION

- 3.4. Do not prevent another person from accessing information if that person is entitled to do so by law.

DECISION MAKING

- 3.5. When involved in the decision making of the Council:
- 3.5.1. Have regard to any advice provided to you by the Council's Chief Financial Officer and Monitoring Officer [Responsible Officer/Clerk to Parish Council] pursuant to their statutory duties.
- 3.5.2. Give reasons for the decisions in accordance with any legal requirements or reasonable requirements of the Council.

RESOURCES

- 3.6. When using or authorising the use by others of the resources of the Council:-
- 3.6.1. Do act in accordance with the Council's reasonable requirements including the requirements of the Council's ICT policy and all relevant policies. Copies of these policies have been provided to you, are available on the Council's Intranet and you are deemed to have read and understood them.
- 3.6.2. The Policies referred to in paragraph 3.6.1 may be updated from time to time and you will be notified of any changes. You must comply with the updated policies as soon as you have been provided with a copy of the same.
- 3.6.3. Make sure that such resources are used for and in accordance with your duties as a Councillor and are not used improperly.

USE OF INFORMATION

- 3.7. Do not improperly use knowledge gained solely as a result of your role as a member for the advancement of your disclosable pecuniary interests.

## DRAFT

PUBLICITY

- 3.8. Have regard to the applicable Local Authority Code of Publicity under the Local Government Act 1986.

**4. PECUNIARY INTERESTS AND INTERESTS OTHER THAN PECUNIARY INTERESTS**

## 4.1. Pecuniary Interests

- 4.1.1. By virtue of the Localism Act 2011 and the Regulations 2012 you must disclose and register disclosable pecuniary interests as defined in the foregoing legislation. Failure to disclose such interests may result in prosecution by which could result in a fine not exceeding £ .

## 4.1.2. A Disclosable Pecuniary Interest [DPI] is

*[await new regulations/exclude as may be defined in Law?]*

## 4.2. Interests Other than Pecuniary Interests?

*[await regulations/will breach involve criminal action or breach of Code?]*

**5. SENSITIVE INTERESTS**

- 5.1. Where a member is concerned that the disclosure of the details of an interest (either a DPI or any other interest which the member is required to disclose) at a meeting or on the Register of Members' Interests, and such disclosure would lead to the member or a person associated with him/her being subject to violence or intimidation, the member may request the Monitoring Officer agree that such interest is a sensitive interest.

- 5.2. If the Monitoring Officer agrees that the interest is a sensitive interest the member must still disclose the existence of the interest at a relevant meeting but the member is not required to provide the details of the sensitive interest during the meeting. The Monitoring Officer shall also exclude the details of the sensitive interest from the published version of the Register of Members' Interests.

## DRAFT

**6. DISCLOSURE AND PARTICIPATION**

- 6.1. Should you have a disclosable pecuniary interest you **MUST NOT** take part in the decision making process of the Council and in order to ensure transparency you must withdraw from such process as regards that DPI.
- 6.2. The Localism Act 2011 makes participation in such matters if you have a DPI a criminal offence.

**7. GIFTS AND HOSPITALITY**

- 7.1. You must disclose and record any gift or hospitality you receive in your capacity as a member of the Council. Such disclosure should be made in writing or by email to the Monitoring Officer in accordance with the Council's Protocol on Gifts and Hospitality.

**8. DISPENSATIONS**

- 8.1. Members who have a disclosable pecuniary [or other interest] may apply for a dispensation on specific grounds which are set out in the Dispensation Procedure [annexed to this Code of Conduct].

**9. INTERPRETATION**

"Co-opted member", means a person who is not a member of the Council but who:-

- (a) is a member of any committee or sub-committee of the Council; or
- (b) is a member of, and represents the Council on, any joint committee or joint sub-committee of the Council;

and who is entitled to vote on any question which is to be decided at any meeting of the committee or sub-committee.

"Disclosable Pecuniary Interests (DPI)" means those interests prescribed by the Secretary of State as such under the Localism Act 2011.

"Pecuniary Interests" means only those interests prescribed by the Secretary of State as "disclosable pecuniary interests".

DRAFT

“Other Interests” means interests other than DPI’s which a member is required (by law) to disclose.

“Meeting” means any meeting of:-

- (a) the Council;
- (b) the executive of the Council;
- (c) any of the Council’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members.

“Member” includes a co-opted member.

“Bullying and intimidating behaviour” means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim’s confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

**DRAFT**  
**THE PRINCIPLES**  
(referred to in paragraph 2.2 above)

- **Selflessness**  
Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
- **Honesty and Integrity**  
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity**  
Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability**  
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
- **Openness**  
Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- **Leadership**  
Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

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## STANDARDS COMMITTEE – TASK GROUP

### The Future Composition of Standards Committee

#### 1. Background

- 1.1. The current Standards Committee has a mixture of District, Parish and Independent members under a Legislative framework which came out of the Local Government Act 2000. The Committee therefore has a variety of views and experience both inside and out side the Council.
- 1.2. The Localism Act 2011 proposes major changes to the Standards regime which has already commenced with abolition of Standards for England and the development of new Codes of Conduct for District and Parish Councils. The Act repeals Section 55 of Local Government Act 2000 so that there is no requirement for a Standards Committee but with a duty in the Act to 'promote and maintain high standards of conduct' it is considered that a Standards Committee ought to remain.
- 1.3. The 2011 Act means the composition of the Standards Committee will be governed by the proportionality rules applicable to the Council. Current co-opted members of Parish Councils and Independent members cease to hold office. A new position of an 'Independent person' is introduced who will be consulted by the Monitoring Officer but is not a co-opted or voting member of the Committee.
- 1.4. As a result and in order to ascertain the most appropriate operational composition of the Standards Committee a number of options arise.

#### 2. Options for Standards Committee: Composition

- 2.1. The table overleaf indicates six possible options for the composition of the Committee. The Task Group should note the following:-
- 2.2.(a) 'Proportional' means in accordance with the Local Government Acts and Regulations requiring that all committees must reflect the political composition of the Council as a whole.
- 2.2.(b) 'Balanced' is used to cover the situation where the full Council votes to disapply the proportionality rules. It requires all members attending the particular meeting to agree with the proposals with none voting against or abstaining. Following agreement the Committee is composed of equal members of all political parties represented on that Committee.
- 2.2.(c) 'Joint Committee' refers to a Committee set up under the provisions of S102 of Local Government Act 1972 for the discharging of any functions of one or more Councils. This would require a resolution of Council and similar support from the Parishes which might prove a logistical problem.
- 2.2.(d) 'Advisory Panel' is essentially a support/advising body made up of non-voting and generally co-opted members who may make non-binding

recommendations/suggestions to a Committee/body within the Council. The Committee may accept or ignore the recommendation/suggestion

- 2.3. There are other combinations but the six options identified pick up most of the areas in which members had an interest.

3. Action

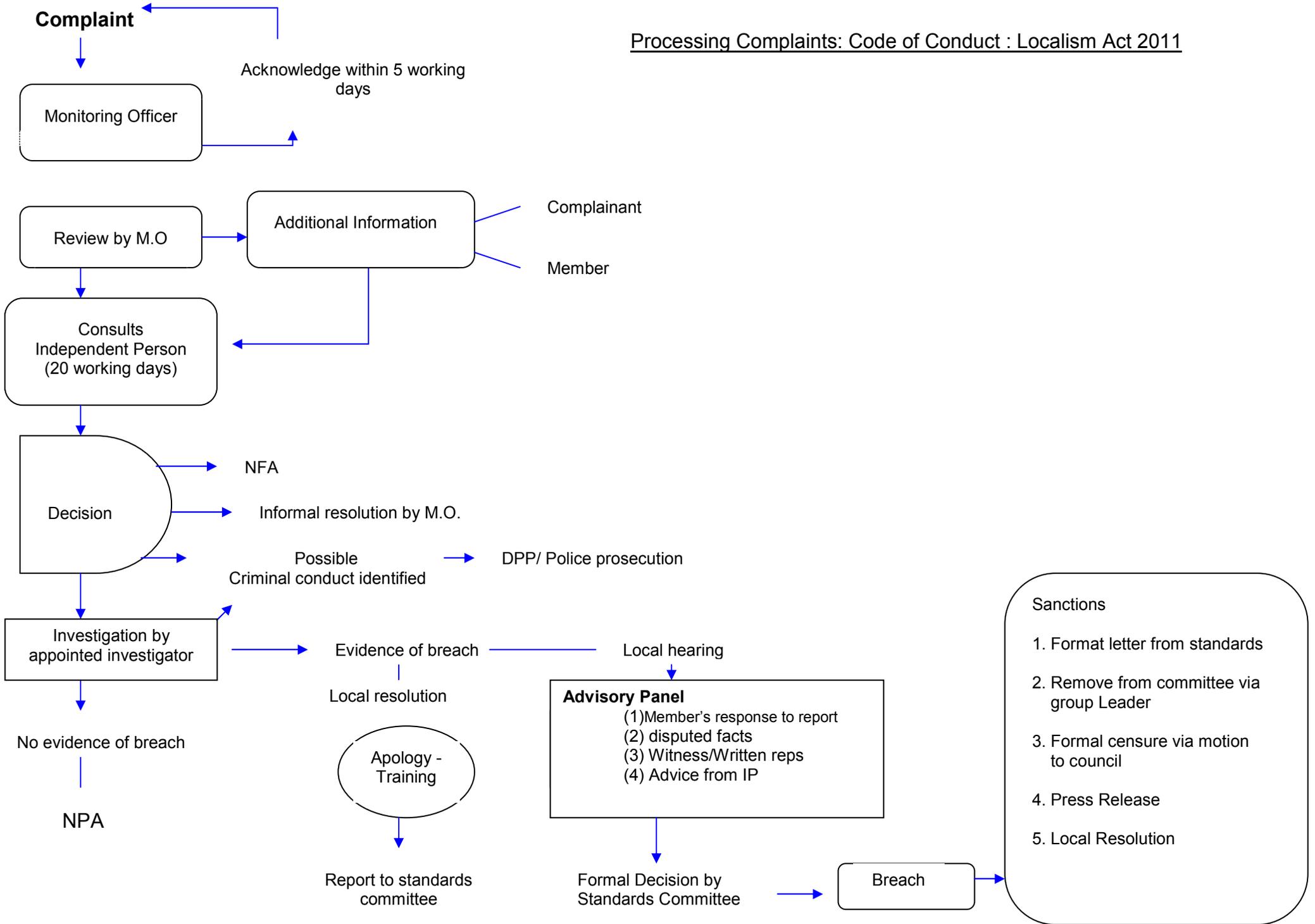
- 3.1. The Task Group is asked to consider the options and make a recommendation to Standards Committee for consideration and from there to full Council in May 2012.

NOTE:- The Task Group recommended that an Advisory Panel comprising eight Members feeding into a proportional Standards Committee of six District Councillors and two co-opted Parish Representatives would be the appropriate model for West Berkshire.

	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
No of Members	8	6 (2 co-optees)	8	9	12	8
Political make-up	6 Con 2 LD	4 Con 2 LD 2 PC (co-opted)	4 Con 4 LD	3 Con 3 LD 3 PC	3 Con 3 LD 3 PC 3 Independent	2 Con 2 LD 2 PC 2 Independent
Type	Proportional	Proportional	Balanced	Joint Committee (S102 LGA '72)	Current Provision	Advisory Panel
PROS	<ul style="list-style-type: none"> <li>In accordance with 2011 Act and early Legislation</li> <li>Consults IP</li> <li>Possible 2 sub-committees to deal with process</li> </ul>	<ul style="list-style-type: none"> <li>In accordance with 2011 Act and early Legislation</li> <li>Input from Parish on parish complaints</li> <li>Better public view</li> <li>Balanced advisory subs?</li> </ul>	<ul style="list-style-type: none"> <li>Provides equal input from both parties</li> <li>Reduces politicisation</li> <li>Two balanced sub-committees if needed</li> </ul>	<ul style="list-style-type: none"> <li>Balanced</li> <li>More PC impact therefore involvement</li> <li>PC input on PC matters</li> <li>Balanced sub-committee</li> <li>All members vote</li> <li>Better public perception</li> </ul>		<ul style="list-style-type: none"> <li>Outside committee structure</li> <li>Provides balanced advice</li> <li>Gives transparency</li> </ul>
CONS	<ul style="list-style-type: none"> <li>WBC centric</li> <li>No external input</li> <li>Public perspective (judging themselves)</li> <li>What's in it for PC's</li> </ul>	<ul style="list-style-type: none"> <li>PC co-optees = non voting</li> <li>Still judged as looking after selves</li> <li>Which PC's represent all those in district</li> <li>No PC take up as little influence</li> </ul>	<ul style="list-style-type: none"> <li>Appears WBC centric</li> <li>Not in accordance with 2011 Act (but complies with other regs)</li> <li>Need full Council vote</li> </ul>	<ul style="list-style-type: none"> <li>Not 2011 Act compliant</li> <li>Need full Council vote for equalisation</li> <li>All PC's need to give delegation to Joint Committee</li> <li>Could be logistically problematic in current time frame</li> <li>PC's no need to agree with outcomes</li> </ul>	<ul style="list-style-type: none"> <li>Illegal if existing Independents on (ACSeS Counsel's opinion)</li> </ul>	<ul style="list-style-type: none"> <li>Non voting</li> <li>Makes recommendations only</li> <li>Not necessarily influential</li> </ul>



Processing Complaints: Code of Conduct : Localism Act 2011



**Sanctions**

1. Format letter from standards
2. Remove from committee via group Leader
3. Formal censure via motion to council
4. Press Release
5. Local Resolution

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## STANDARDS COMMITTEE – TASK GROUP

### Dispensations under the Localism Act 2011

1. Introduction
  - 1.1. The provisions on dispensations are significantly changed under the Localism Act. Previously there was a reference in the legislation and over a number of years Government produced regulations dealing with the process.
  - 1.2. It should be noted that Parish Councils under the legislation are given the ability to deal with their own dispensations but it is not clear at this time whether or not they will be required to consult either the Monitoring Officer or the Independent Person. Further it is not clear if any regulations relating to Parish Councils will be issued.
  - 1.3. At present a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds. These are:-
    - (i) that at least half of the Members of the decision making body have a prejudicial interest thus preventing the transaction of business. This provision has been used on a number of occasions in respect of Parish Councils.
    - (ii) that so many Members of one political party have prejudicial interests in the matter that it would upset the result of the vote on a political matter by impacting on the proportionality rules affecting the particular body.
  - 1.4. Members will be aware of the current process and the documentation which is used in order that in effect a “digital” meeting of the Standards Committee comments and proves otherwise that application for a dispensation.
2. The New Dispensation Regime
  - 2.1. Under Section 33 of the Localism Act 2011 in future a dispensation will be able to be granted in the following circumstances.
 

The Council may on:-

    - (a) a written request
    - (b) made to the Proper Officer of the Council
    - (c) by a Member or Co-Opted Member of the authority.

grant a dispensation enabling a Member or Co-opted Member to participate in a meeting notwithstanding that they have a Disclosable Pecuniary Interest under Section 31 of the Act.
  - 2.2. The criteria which now apply are increased and cover the following circumstances:-
    - (i) that so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would “impede” the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.]

- (ii) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (iii) that the authority considers that the dispensation is in the interests of persons living in the authority's area.
- (iv) that without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (v) that the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.

2.3 In each case when a dispensation is granted it must specify how long it lasts for to a maximum of four years (this reflects the previous legislation) and the Council must consider the application "after having had regard to all relevant circumstances".

2.4. Overall the provisions of the new legislation do expand the instances when a dispensation may be granted which for Parish Councils may be of assistance although it could equally bring comment from the public who may perceive that certain individuals have an interest but are still taking part in the decision making process.

### 3. Delegation

3.1. A major change from the previous legislation under the Local Government Act 2000 is that the Localism Act gives discretion for this power to be delegated to Standards Committee, a Sub-Committee or to the Monitoring Officer. Previously, the Standards Committee itself had to deal with any applications for dispensation.

3.2. It is considered that grounds (i) and (iv) are objective and it is recommended that dispensations on these grounds are delegated to the Monitoring Officer with an appeal to a Standards Committee. This would enable dispensations to be granted effectively "at the door of the meeting".

3.3. Grounds (ii), (iii) and (v) are rather more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee after consultation with the independent person.

### 4. Considerations in granting a dispensation

4.1. As mentioned above it is not clear whether not the Department of Communities and Local Government will issue further guidance and/or regulations dealing with dispensations but it is considered that Members should be given some pointers as to what they may wish to consider when considering a dispensation and when matters are delegated to the Monitoring Officer to ensure consistency. Having reviewed the previous guidance it is considered that the following applies:-

- (i) the Standards Committee should weigh up the effect of Members' prejudicial Interest(s) against the outcome of the vote if they are not participating in the vote.
- (ii) the Standards Committee should consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Member were allowed to vote.
- (iii) the Standards Committee should look at whether the interest in question is one that is common to both the Member and to a significant proportion of the population.
- (iv) account should also be taken of the expertise and knowledge of the Member and whether this justifies their participation in the item in question. For example, if members of Police and/or Fire authorities would be able to bring their expertise by addressing the meeting.
- (v) Standards Committee Members should have regard to whether the business in question relates to a voluntary or public body which is to be considered by an Overview and Scrutiny Committee, and additionally whether the interest is a financial one.
- (vi) if a dispensation not being granted would mean the meeting was not quorate, this might be a reason to grant the dispensation.

5. Process for granting and recording a dispensation

- (i) a Member must apply in writing to the Monitoring Officer for a dispensation as soon as possible, setting out why it is required. The Monitoring Officer will then arrange for the Standards Committee to consider the request. Only written requests are acceptable, and cannot be made by someone else on behalf of the Member. Group and joint requests are not permitted. Each Member should apply individually.
- (ii) a meeting of the Standards Committee must be then convened to consider the application. In the case of urgent items if it is possible to convene a virtual meeting of the Committee, an urgent dispensation may still be granted.
- (iii) the Standards Committee should then consider the legal implications for the dispensation set out at 4(i) to (v) as well as at 2.1(a) above. This consideration may also take account of any other relevant circumstances or local criteria.
- (iv) members of the Standards Committee should determine whether the applicant should be permitted to make oral representations to the meeting of the Standards Committee or whether written applications only will be allowed.
- (v) the Standards Committee should then determine the nature of any dispensation they are minded to grant:
  - (a) whether the applicant can speak and not vote; or
  - (b) whether the applicant can participate fully and vote.
 Additionally the Committee can also decide the length of the dispensation (not more than four years).
- (vi) it should be noted that the regulations do not allow for the Standards Committee to grant a general dispensation to cover any situation where a prejudicial interest may arise.
- (vii) if the Committee grants a dispensation it should do so in writing and before the meeting in question is held.

- (viii) the Standards Committee may decide to refuse an application for a dispensation. This is within their discretion under the regulations.
  - (ix) a written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.
- 5.2. Any advice on the process of granting dispensations and any questions relating to this arrangement should be directed to the Monitoring Officer.