

FUTURE STANDARDS OF CONDUCT OF MEMBERS OF LOCAL AUTHORITIES IN ENGLAND

Legal Briefing L08-10 detailed the proposed abolition of the current standards framework. This briefing explains the impact of the Localism Bill provisions specifically in relation to the standards of conduct expected of councillors (including persons who are not councillors but who are members of a committee or sub-committee or a joint committee of an authority) after the Localism Bill receives royal assent (expected to be late 2011) and the relevant statutory provisions come into force (expected in 2012).

The Localism Bill seeks to repeal the duties on a parish council, currently set out in Part III of the Local Government Act 2000 (as amended) to:

- adopt the model code of conduct as currently prescribed by regulations (with a power to revise it, whilst still incorporating the mandatory provisions of the model code);
- publicise adoption of a code of conduct;
- make it available for public inspection;
- send a copy of it to the standards committee of the relevant district or unitary authority.

In addition, when the new legislation is in force, councillors will no longer be required to give a written undertaking that in performing their functions or as part of their declaration of acceptance of office that they will observe the code of conduct which has been adopted by their council.

The Localism Bill requires councillors to register and declare 'financial and other interests', which may prevent or restrict their participation in business being considered at a meeting. It is expected that the new requirements in respect of the registration and disclosure of interests will be similar to the obligations which councillors are currently subject to by virtue of the present model code of conduct. As indicated by Legal Briefing L08-10, a councillor who fails, without reasonable excuse, to register and declare certain interests or who takes part in council business which their interests restrict or prohibit, risks committing a criminal offence, which if successfully prosecuted could lead to a fine of up to £5000 and disqualification of up to 5 years from being or becoming a councillor.

By continuing to impose legal requirements which restrict councillors from participating in council business when they are restricted or prevented from doing so, the Localism Bill provisions recognise the need for honesty and objectivity in councillors' conduct relating to participation and decision making at meetings.

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Other standards of conduct expected of a councillor, not related to the registration and disclosure of interests, which are currently prescribed in the mandatory provisions of the model code of conduct, will not be mandatory when the new statutory provisions come into force. Such obligations, as contained in the present model code of conduct, require a councillor, for example, to:

- treat others with respect;
- not act in ways which would result in the council breaching its statutory equalities obligations;
- not bully;
- not disclose confidential information;
- not bring his/her office or the council into disrepute;
- not use his/her office to improperly confer an advantage or disadvantage.

The imminent repeal of the model code of conduct does not mean that there is no alternative redress against types of conduct that would have been prohibited, as has always been the case. Civil remedies and legal redress for some types of conduct, currently regulated by the model code, may be available in legal claims for libel, misfeasance in public office, breach of discrimination and equalities and employment legislation, harassment, or breach of a duty of confidence. Conduct by a councillor which results in a criminal conviction and a term of imprisonment for more than 3 months results in disqualification (s. 80 Local Government Act 1972). A councillor who uses his/her position for financial gain may be convicted and sentenced for up to 10 years under the Fraud Act 2006.

The Localism Bill provides that a council may, if it wishes, adopt a code of conduct. Notably, the Bill is silent on what such a code of conduct should include in terms of the types of conduct expected. If a council chooses to adopt a code of conduct, it would need to decide its content and scope. As the Bill imposes separate stand alone obligations on councillors in respect of the disclosure and registration of interests, a code of conduct adopted by a council on a voluntary basis will not need to include obligations on councillors to register and disclose interests.

The Localism Bill provides that full council may:

- 1) Revise its existing code (because it is will have been based on the prescribed model code of conduct which will have been repealed and in any event has no need to refer to the separate obligations on councillors to register and disclose financial and other interests *or*
- 2) Adopt a code of conduct to replace its existing code of conduct *or*
- 3) Withdraw its existing code of conduct without replacing it.

If a parish council chooses option 1) or 2) above, it will need to recognise the impact of doing so. The Localism Bill provides that if a person lodges a written complaint which alleges that a councillor has failed to comply with the council's code of conduct, it must consider whether it is appropriate to investigate the allegation and if it decides that an investigation is appropriate, to investigate the allegation in such manner as it thinks fit. If

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a council then decides that a councillor has failed to comply with the code, it may take action to take in respect of the councillor concerned. A council will not be permitted to suspend or disqualify councillor from office. The Bill does not express the nature of the sanctions available. It is NALC's view that the range of sanctions available is limited. The range of sanctions could, for example, include:

- censure;
- terminating the councillor's appointment to represent the council on an external body;
- terminating the councillor's membership of a committee by dissolving the committee and appointing new members and determining new terms of office;
- requesting a councillor to apologise for his/her conduct;
- requesting a councillor to attend relevant training.

The adoption of a voluntary code of conduct is likely to present operational problems for a parish council. It is difficult to see how a parish council might objectively or effectively investigate an alleged failure by a councillor to comply with its code of conduct (which individual councillors are not required to undertake to observe) or sanction a councillor for his/her failure to comply with the code. A council may also face difficulties in enforcing any sanction it did impose on a councillor. For example, if a council, having determined that a councillor had failed to comply with its code, requested him/her to attend training or to apologise, the council has no way of compelling the councillor to do this. If sanctions against councillors cannot be enforced, this will inevitably undermine the purpose of the code and the complainant's expectations of it and may even harm a council's reputation.

It might be more common for a principal authority to adopt a code of conduct on a voluntary basis. Principal authorities will be subject to the same difficulties in terms of deciding the content of a code and enforcing any sanctions, but they may be better resourced to investigate complaints. Sanctions may also be delivered along party political lines which do not apply to the same extent in parish councils and the composition of their committees. It is unlikely that voluntary codes of conduct adopted by principal authorities can be used and effectively implemented by a parish council.

The Localism Bill imposes a duty on all local authorities including parish councils to promote and maintain high standards of conduct by its councillors. The Bill does not describe the steps that a council must take to fulfill this duty nor does it define 'standards' or 'conduct'. The Bill does not require a council to adopt a code of conduct; it merely permits this as an option.

It is NALC's view that a parish council may satisfy its future duty to promote and maintain high standards of conduct, using methods which do not include adopting a voluntary code of conduct. This approach could include a parish council taking the following steps.

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- 1) Endorsement by full council at its annual meeting (or another full council meeting) that the 7 principles of public life (also known as the Nolan Principles) as established by the Committee on Standards in Public Life applies.* These are set out below.

(i) Selflessness

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

(ii) Integrity

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

(iii) Objectivity

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

(iv) Accountability

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

(v) Openness

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

(vi) Honesty

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

(vii) Leadership

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

- 2) Confirming and publicising councillors' commitment to observe the Nolan Principles (e.g. include this in its publication scheme and on its website).
- 3) Adoption of a new complaints procedure which accommodates complaints specific to the acts or omissions of individual councillors for which the council takes corporate responsibility (except if legal liability arises for the councillor concerned). If a complaint specific to the acts or omissions of individual councillor(s) was upheld by a council, no sanctions (except censure) could be imposed on the councillor(s) because these would be unenforceable. A council would need to decide how it make amends if it upheld such a complaint. This may include taking

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a particular action, providing a written apology to the complainant, or the payment of compensation.

- 4) Promote and provide relevant training to councillors (e.g. in respect of the role and responsibilities of councillors, governance, equalities and employment good practice, and planning) aimed at improving conduct.

Summary

Using the suggestions above, parish councils must be able to demonstrate that they satisfy their duty to promote and maintain high standards by councillors. It is NALC's view that a council's complaints procedure must enable complaints to be made in respect of councillor conduct. Any such complaints would be dealt with under the council's standard complaints procedure.

As a voluntary code of conduct adopted by a council would not impose legal obligations on individual councillors, and because sanctions for their misconduct are limited, and enforceability of sanctions are difficult, NALC does not recommend that a parish council adopts one. Once the new legislation is in force, we recommend that a parish council withdraws its existing code of conduct without replacing it. NALC will not be drafting a voluntary code for parish councils to use or amend to suit their needs.

* The Committee on Standards in Public Life was established in 1994, initially to deal with concerns about unethical conduct amongst MPs, including accepting financial incentives for tabling Parliamentary questions, and issues over procedures for appointment to public bodies. As an independent advisory body to the Government, it monitors, reports and make recommendations on all issues relating to standards in public life. Lord Nolan was the first Chairman of the Committee. The Nolan Principles are not statutory. Some public bodies have incorporated them into Codes of Practice and other internal standards that can then be taken into account.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

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