

**West Devon Borough Council**

**THE FUTURE OF STANDARDS**

*A consultation paper on what might replace the current provisions for regulating the conduct of councillors after their repeal by the Localism Bill*

To:

- Members of West Devon Borough Council
- Members of town and parish councils in the Borough of West Devon

## **1 Background**

- 1.1 The Government intends through the Localism Bill to abolish the Local Standards Framework introduced by the Local Government Act 2000. That framework required all local authorities to adopt a Code of Conduct binding upon councillors, required principal authorities to set up a Standards Committee to promote good governance and behaviour, and established Standards for England to monitor all of that nationally. The Bill will also abolish the “General Principles of Public Life”<sup>1</sup>.
- 1.2 In its place, the Localism Bill proposes that with effect from April 2012:
  - 1.2.1 The duty on authorities to promote and maintain high standards of conduct by elected and co-opted members will remain
  - 1.2.2 Authorities may voluntarily adopt a code of conduct for their councillors and set up processes by which any failures to comply with the voluntary code can be investigated and dealt with
  - 1.2.3 The Monitoring Officer must establish and maintain a register of members’ interests which will be available for public inspection
  - 1.2.4 Regulations will specify:
    - what interests are to be registered
    - when they should be disclosed
    - when a member with an interest may not participate in the council’s business
    - when dispensations may be granted permitting participation
    - what sanctions an authority may impose for failure to comply with the regulations.
  - 1.2.5 Failure to register a financial or other interest or to disclose it before taking part in the council’s business where that interest is

engaged, or taking part in business when that is prohibited on account of the interest, will be criminal offences (prosecutions will be brought by the Police not the Council) and the maximum fine will be £5,000. In addition the Court may disqualify the member for up to five years.

1.3 The Government published an Impact Assessment of this part of the Localism Bill<sup>2</sup> which includes these points:

- savings made by abolishing the compulsory provisions would be negated by retention of voluntary measures
- failing to retain some aspects of the current regime might lead the public to think that an authority isn't properly committed to upholding high standards of conduct; accordingly, it could be assumed that most authorities would retain the most valuable aspects
- Standards for England's own review in 2010 found little support for complete removal of the Local Standard Framework but wide support for its reform
- there is a risk that with nothing in place, standards of conduct would worsen because councillors would know they are subject to no control
- after abolition of the compulsory code there would be less severe penalties for the worst offences because authorities would have no powers to suspend or disqualify
- risks arising from breaches relating to bullying, disclosing confidential information or misuse of resources can be covered by a strengthened Member-Officer protocol and training
- other misbehaviour can be caught by existing laws.

1.4 The other laws that affect individual Members' conduct include these:

#### 1.4.1 Criminal Law

- Bribery
- Misconduct in public office
- Theft and false accounting
- Common assault

#### 1.4.2 Civil Law

- Misfeasance in public office<sup>3</sup>
- Defamation

- Negligence
- Injunctions
- Equalities laws

Enforcement of any of these would require action before the courts.  
There is also recourse to the Local Government Ombudsman.

## 2 Going forward

2.1 At its meeting on 8 March 2011, the Standards Committee was advised that there are discussions at a local level between the monitoring officers of Devon authorities and nationally with the Local Government Association and the Association of Council Secretaries and Solicitors (ACSeS), all considering what should be put in place once the current provisions are abolished. So far nothing concrete has appeared for consideration but some themes are emerging:

2.1.1 That standards of behaviour amongst councillors in West Devon are generally very high, with serious failures being a very tiny minority;

2.1.2 That nevertheless there should continue to be a set of rules laying out what behaviour by councillors is acceptable and how failure to adhere to such rules would be regarded;

2.1.3 That this could be a strengthened member/officer protocol or a code of conduct;

2.1.4 That before making any major changes we should wait and see what the ACSeS draft replacement “voluntary” code contains;

2.1.5 That we should consider the contents of such a code and means of enforcing it with colleagues in other Devon councils, with an eye to what is favoured nationally;

2.1.6 That there should be consultation and debate amongst the councillors to whom such rules would apply, and the wider community, as to what the rules should contain and how they should be enforced, before adoption.

2.3 Members have previously commented that:

2.3.1 West Devon should adopt a voluntary code in order to give the public and press confidence, even though the limit on sanctions might make it meaningless;

2.3.2 Deletion of the Principles of Public Life is disappointing;

- 2.3.3 Concern over whether the Police will give sufficient priority to standards issues;
- 2.3.4 A continuity of approach would be beneficial
- 2.3.5 A proliferation of codes within a locality (e.g. with each parish, district, county DNP having its own code) was not beneficial and a county-wide approach was worth investigating.

### **3 Questions for consultation**

- 3.1 When the current Local Standards Framework is abolished, leaving only the duty to promote and maintain high standards of conduct by members is compliance with that duty best secured by:
  - 3.1.1 Relying only on the statutory provisions in the Localism Bill and the general law?  
or
  - 3.1.2 Introducing a voluntary code of conduct for its members?
- 3.2 If a voluntary code is not required:
  - 3.2.1 Should we take steps to improve our own protocols for dealing with business, such as the Protocol on Member/Officer relations and adopting a Planning Code of Good Practice to guide members?
  - 3.2.2 How should compliance with those protocols be secured?
- 3.3 If a voluntary Code is to be introduced, what would be the best solution:
  - 3.3.1 That West Devon (with South Hams) sets up a code for our own members and makes it available as a model for town and parish councils?
  - 3.3.2 That this Authority seeks to combine with other Devon authorities to establish a common code?
  - 3.3.3 That we all subscribe to a national model, if any?
- 3.4 Is a Voluntary Code best enforced through:
  - 3.4.1. Local arrangements such as a joint local standards committee (e.g. South Hams and West Devon, perhaps with Teignbridge)?
  - 3.4.2 County-wide arrangements administered centrally?
- 3.5 What sanctions are:

3.5.1 effective and

3.5.2 appropriate to be administered locally?

## 4 Responses

4.1 Responses to this consultation paper should be sent to the West Devon Borough Council Monitoring Officer at Kilworthy Park, Tavistock, Devon, PL19 0BZ or by email to [monitoring.officer@westdevon.gov.uk](mailto:monitoring.officer@westdevon.gov.uk) .

4.2 Please arrange for your response to arrive no later than 30 September 2011.

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<sup>1</sup> The ten Principles of Public Life are Selflessness, Honesty & Integrity, Objectivity, Accountability, Openness, Personal Judgment, Respect for Others, Duty to Uphold the Law, Stewardship and Leadership.

<sup>2</sup> Dept for Communities & Local Government, January 2011:  
<http://www.communities.gov.uk/documents/localgovernment/pdf/1829722.pdf>

<sup>3</sup> Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office holder has misused or abused their power.