

**CHELTENHAM BOROUGH COUNCIL**  
**STANDARDS COMMITTEE ANNUAL REPORT**  
**APRIL 2011-MARCH 2012**

My report this year is not in the usual form of just a summary of what we have been doing; it consists mostly of a commentary on the part of the Localism Act 2011 that concerns Standards. It aims to give a flavour of what the new regime will mean, to express the initial thoughts of the Standards Committee and to outline issues on which you, the Council, must shortly make decisions.

But first to deal with our activities this past year. This can be summed up as “not very many”. With our imminent demise, there has been no change of membership, no new or revised codes or protocols to dissect, no papers from Standards for England look at, and no conferences or seminars to attend. We reduced the number of meetings accordingly, our last one being a workshop in February on the new Act. We discussed its implications and most of the commentary below springs from that discussion.

The number of complaints of breaches of the Code remained very low and we have had very few cases to consider. Those that did come up did not involve major transgressions and no-one was found to be in breach. On the whole the investigations this year were completed relatively quickly unlike previous investigations which I reported last year.

Turning to the Localism Act 2011 which, as you know, finally received the Royal Assent at the end of last year. It did not come into force immediately and while Standards for England is abolished local Standards Committees remain in existence for at least a few months yet. Then they will either have to be abolished or reconstituted. The reason for the delay is that the Act has to be supplemented by Regulations and these have not yet appeared, even in draft form. The latest indication of Government intention is that the Regulations will be made to enable the new conduct regime to be implemented on 1<sup>st</sup> July 2012. This has already shifted from the original target date of 1<sup>st</sup> April and one of the consequences of the slippage is, of course that for Councils such as CBC, which have elections in May, the new Councillors will take up their office under the current arrangements and will (assuming the 1<sup>st</sup> July date holds good) within a very short space of time have to change to the new arrangements.

The part of the Localism Act concerned with Standards is mercifully brief and, discounting the bits concerned with London, amounts to about eight pages only. A schedule lists amendments to other Acts, mainly the Local Government Act 2000, consequential on the abolition of the present regime. The basic provisions of the Act are:

1. An authority must promote and maintain high standards of conduct by members.
2. An authority must adopt a Code of Conduct consistent with certain principles (selflessness, integrity etc.).

3. An authority must maintain a Register of Interests.
4. There must be arrangements under which allegations can be investigated.
5. There must be arrangements under which decisions on allegations can be made.
6. There must be arrangements in place for appointing at least one independent person whose views are to be sought , and taken into account, before any decision under 5 is made.
7. An independent person cannot be, either presently or within the previous five years, a member, co-opted member, or officer of the authority, or a relative or close friend of such persons.
8. Strict rules apply to the disclosure of pecuniary interests.
9. Transgression of those rules is a criminal offence.
10. Sensitive interests can be withheld from the publicly available Register in certain circumstances.
11. Restrictions on members participating in Council business because of pecuniary interests can be lifted in certain circumstances.

It has been authoritatively stated that there is a “general power of competence” which empowers local authorities to do anything that is not forbidden. So on the face of it the Council has wide discretion as to how to put flesh on the bones of the Act, but the Regulations will inevitably set the parameters. Nevertheless, looking at these main provisions in more detail in correspondingly numbered paragraphs, the following are observations offered by myself on behalf of the Standards Committee.

1. Nothing contentious about this.
2. No-one could surely quarrel with the principles, which are essentially the Nolan ones to be found in the present Code. We are given the option of merely revising the present Code or of re-hashing it so drastically that it should be regarded as a new Code. The answer probably lies between fine-tuning and a complete rebuild, but until the regulations appear there is little point in setting out to re-draft. All I can say is that assuming that the current targets are met a new Code will be laid before you for approval later this year.
3. A Register of Interests already exists, of course. Under the new arrangements it must be made available on the Council’s website as well as in document form. The Act separates what must be entered in the Register into “pecuniary interests” and “interests other than pecuniary interests”, the distinction of which is not from the Act but will be contained in the awaited Regulations.
4. Under the old regime investigations were carried out by an independent consultant or by the in-house legal department. Apart from the expense, which could be considerable, this system led in some instances to long delays (almost a year in one or two cases) between the original complaint and its resolution. I have mentioned before that the system needed streamlining and now is the opportunity, subject of course to the Regulations. For example, it was mooted at our recent workshop that, following documentary submissions, an investigative

Hearing should be held to which all parties would be summoned to say their piece and be cross-examined. A decision might be given on the spot or within a few days. All resolved in a matter of weeks rather than months. I believe that something like that would have satisfactorily dealt with all the cases that have come before us.

5. See 4 above. Roll the investigation and decision making into one, rather than separate them. But what we do not know yet is what sanctions may be applied if the decision is that there has been a breach of the Code.
6. The views of an independent person or persons must be sought before making a decision on an allegation referred for investigation. This person or persons view can be sought not only by the authority but also by a member the subject of a complaint. It is difficult to envisage how this consultation may take place when a complaint is actively under consideration.. This has to be a permanent appointment although the length of term is unclear. The Act envisages more than one independent person, and that surely is sensible as holidays, illness, business commitments etc. are bound to deprive you of a singleton at some crucial point.
7. This provision rules out all the existing independent co-opted members of the Standards Committee carrying on as independent advisers, which is a pity as their collective experience would be an asset. There is therefore some recruitment to be done, which has seldom proved easy in the past.
8. The Regulations will provide definitions of disclosable and non-disclosable pecuniary interests. Further comment is difficult until more information is available.
9. Breaking the rules on pecuniary interests is a matter for the Director of Public Prosecutions. On conviction the penalty is a fine and/or up to five years disqualification.
10. The circumstances are that the member concerned could be subject to violence or intimidation if certain interests were made public. They still have to be disclosed to the Monitoring Officer, who decides whether or not they should be made public.
11. This continues current practice of dispensations and enables a quorum to be maintained or a fair political balance to be kept, or it is generally in the interests of those living in the Council's area.

What is noticeably absent from the Act is any reference to a Standards Committee. There is only the vague injunction that "arrangements" must be in place for certain procedures. So at one extreme the whole Council could become involved (a sledgehammer to crack a nut) and at the other the Monitoring Officer (advised by the non-voting independent) could deal with a case. Either is far from ideal and therefore the solution for Cheltenham is likely to lie somewhere in between. One of the elements of the current system which operates well is the limit of three Members on each Hearing sub-committee and that is a common number for low level tribunals (for example Magistrates' Courts). Also, political balance can be achieved. So the recommendation pending sight of the Regulations is to stick with three for any Hearings. A larger group will be needed to cater for absences and you might even call that group your Standards Committee! But at our recent workshop it was observed that there is some synergy with the Audit Committee in terms of ethics and governance, and so one of the choices for the Council is to expand that Committee's remit.

Parish Councils also have to follow these reforms and the above applies to them with a few exceptions. They must adopt a Code of Conduct and could do so independently, but it is quite in order for them to adopt the Code of the principal authority, i.e. that of the CBC. Their Register of Interests must be kept by the CBC Monitoring Officer and be available in document form in the CBC area. The Register must also be on their website if they have one, and in any event it must be on the CBC's website. They do not have to make their own "arrangements" for investigating allegations as the principal authority (CBC) must do this for them.

Because matters are still unresolved, this may not be my final word. But as the end of the present Standards Committee is nigh, I would like to record my thanks now to all past and present members for their service and support, and also to the officers of the CBC who have ensured that we have operated smoothly and, I think, well.