

Meeting Date	15 November 2011
Report Title	Monitoring Officer Annual Report
Portfolio Holder	Not applicable for this report
SMT Lead	Director of Corporate Services as Monitoring Officer
Head of Service	Not applicable
Lead Officer	Director of Corporate Services
Key Decision	No
Classification	Open

Recommendation That the Standards Committee notes this report and the following action points:

1. The Committee to consider the implications of the Localism and Decentralisation Bill once it is published.
2. The Committee to undertake work relevant to maintaining the current regime until it is abolished or replaced and that the rest of its identified work programme be put on hold until it has considered the Bill further.

PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1. This is my sixth report, as Monitoring Officer for Swale Borough Council. The purpose of the report is not only to provide an overview of Monitoring Officer work in the past year, but also to provide an opportunity to review and learn from experience. This report therefore sets out the Monitoring Officer's statutory responsibilities and summaries how several of these duties have been discharged since my last report and seeks to draw Members' attention to some of the more significant developments which may require attention.

THE ROLE OF THE MONITORING OFFICER

2. The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer. The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision-making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards. A Summary of the Monitoring Officer's functions is as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy.	Local Government and Housing Act 1989
Establish and maintain the Register of Members' interests, and the register of gifts and Hospitality.	Local Government Act 2000
Report on sufficiency of resources	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Support the Standards Committee. Promote and maintain high standards of conduct.	Local Government Act 2000
Receive reports from Ethical Standards Officers and Case Tribunals.	Local Government Act 2000
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Undertake the local filter and assessment of complaints that a member may have breached the Code of Conduct.	The Standards Committee (England) Regulations 2008. The various Sub Committees of the Standards Committee – the Referrals Sub Committee, the Standards Appeals Sub Committee and the Hearings sub Committee
Receive referrals from Ethical Standards officers for local	Local Authorities (Code of Conduct) (Local Determination) Regulations

Investigations	2003
Advice on whether executive decisions are within the budget and policy framework	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity Budget and Policy Framework issues to all members.	The Constitution
Legal Advisor to the Standards Committee when carrying out a local Determination Hearing	Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
Issuing Dispensations to Members regarding prejudicial interests	The Standards Committee

CONSTITUTIONAL REVIEW AND REVISION

3. The Constitution sets out how the Council operates and how decisions are made. It contains the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is the guardian of the Council's Constitution and is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

4. This is particularly important in relation to the overall governance of the Council. It is the Constitution which sets out the decision making and accountability framework. Each year the Audit Commission provides an annual governance report. The report is considered by the Audit Committee. The key messages from the report were as follows:

- Unqualified audit opinion
- Proper arrangements to secure value for money

5. The District Auditor reported that he was pleased that the Council had improved the quality of accounts preparation with better working papers and fewer amendments to the draft statements. Good progress had been made with prior year recommendations. He acknowledged that the Council had dealt successfully with the challenges posed by the first year implementation of International Financial Reporting Standards (IFRS).

6. He also commented that the Council has proper arrangements to secure economy, efficiency and effectiveness in its use of resources. The Council's underlying financial position is sound. It continues to have an effective financial planning framework and appears well-placed to address the financial pressures it faces over the medium term. He stressed that the Council takes a strategic approach to prioritisation of resources and productivity and is on course to achieve its savings target for 2011/12.

7. A part review of the Constitution was undertaken to reflect the latest legislation and best practice in anticipation of the authority moving to four yearly elections from May 2011. In addition the authority agreed new executive governance arrangements by 31st December 2010. This model is known as a 'strong Leader' model with the Leader of the Council being elected for a four year term and having greater authority over the appointment of Cabinet. Significant progress has been made on reviewing the Constitution. Attached at Appendix A is the summary of further changes that will need to be considered by General Purposes Committee. It has been agreed that these will be considered alongside any required once the Localism Bill becomes law.

8. In previous reports I have reminded Members of the link between the work of the Standards Committee and the Key Line of Enquiry under Use of Resources (UoR) assessment. Since the election of the Coalition Government UoR has been replaced by an approach more focused on value for money, as evidenced by the comments of the District Auditor in Para 6. I do not believe that this should reduce the concepts of good decision making that the Constitution is designed to promote:

- "taking informed, transparent decisions and managing risk"
- "engaging stakeholders and making accountability real"
- "members & officers working together to achieve a common purpose with clearly defined functions and roles"
- "effective leadership throughout the Council and being clear about what the executive, non-executive and scrutiny functions and the respective roles and responsibilities"
- "positive relationships between members and the local community, including the voluntary and community sector must be clear so each knows what to expect of each other and what to do when things go wrong"
- "the Council's culture is open and outward facing with a clear focus on the needs of local communities"

9. Indeed, as the likely provisions of the Localism and Decentralisation Bill become clearer, these concepts are even more relevant.

LAWFULNESS AND MALADMINISTRATION

10. The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and Chief Financial Officer advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring reports, agendas and decisions to ensure compliance with legislation and the Constitution. At the heart of this work is the agenda of and reports to the Cabinet. Cabinet reports and decisions are made publicly available for Councillors either electronically or by way of a paper version. Cabinet decisions can also be viewed by Members of the public through the Council's website: www.swale.gov.uk/dso.

11. The Executive has met on 11 occasions since November 2010. In each case the Management Team had reviewed the agenda and associated draft reports. This clearance process is an important part of ensuring corporate working in an effective Council and provides a vital opportunity to discuss aspects of reports or decisions that

require 'buy-in' from, or have implications across, services. All Heads of Service receive draft agendas and Finance, HR and Legal officers have the opportunity to contribute to reports under 'Implications'. Strategic Management Team reviews the Forward Plan as a standing item on its agenda and seeks advice from the Head of Organisational Development, Head of Finance and the Head of Legal as appropriate. This enables Strategic Management Team to review early in the process reports to be presented to the Cabinet. This has enhanced earlier input and through informal working with the Cabinet has ensured that a clear set of recommendations are presented to the Cabinet for consideration.

12. Ultimately, if the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration a report must be submitted to the Full Council or, where appropriate, the Cabinet after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

13. The sound governance arrangements operated by the Council and confirmed by the District Auditor ensure that the power to report potentially unlawful decision-making is rarely, if ever, used. I have not had to issue such a report.

GOOD GOVERNANCE AND CODE OF CONDUCT

14. The Monitoring Officer has continued his pro-active role in ensuring good practice, good procedures and good governance. Where I have seen evidence which tests the boundary of good governance I have sought to engage both the individual Member and Group Leaders to ensure that there is some discussion and shared ownership of where the correct threshold of acceptable or appropriate conduct or good governance lies. This dialogue will continue and I remain grateful for the support of Group Leaders in discussions on these issues. I am also pleased to record once again that the occasions where I have sought to do this have been very few.

15. There have again been a number of issues relating to planning which is not surprising given the quasi-judicial nature of the work. Matters raised tend to relate to declaration of interests. In particular, prejudicial interests and the impact this has on the member's right to speak (they are able to speak in the same way as a member of the public but must leave the meeting room having done so). The Head of Development Services, with external support, has reviewed planning committee procedures and provided updated training for planning members and agreed an ongoing programme of training throughout the year. I have also given individual advice to members on predisposition, predetermination or bias and the Code. I gave advice on declaring interests where members represent the Council on an outside body where they have been appointed by the Council (they have a personal interest which must be registered only if they speak on the matter unless the interest relates to financial matters when their interest becomes prejudicial).

16. I have provided general informal advice to parish Councillors on potential conflicts of interests, disclosure of information and the nature and extent of personal and prejudicial interests.

17. Good governance involves providing procedure notes, guidance, developing and implementing protocols and providing briefings and enabling effective support to Councillors in their different roles including Member training. The purpose of these briefing notes is to provide readily accessible reference materials for members. In addition all briefing notes received from Standards for England are sent to all members. This year has been one where because of the impending changes to the standards regime I have not provided many briefing papers.

18. The main task for the year has been administering the local filter, where all complaints are considered by the sub-Committees of the Standards Committee. I am extremely grateful to my Deputy Monitoring Officer, my Personal Assistant and Democratic Services for all the work necessary in arranging the various sub-committees and all the accompanying paperwork.

19. There has been an increase in the number of complaints received. Details are set out in Appendix B.

REPORTS FROM THE LOCAL GOVERNMENT OMBUDSMAN AND COMPLAINTS

20. Last year the Council has reviewed its approach and prepared its first annual complaints report incorporating the annual letter for the year ended 31st March 2011 from the Local Government Ombudsman. This year's report is attached as Appendix III.

THE ETHICAL FRAMEWORK AND SUPPORT TO THE STANDARDS COMMITTEE

21. As lead Officer for the Standards Committee and the Ethical Framework the Monitoring Officer has a key role in facilitating, promoting the Council's Ethical Framework and in promoting and maintaining high standards of conduct within the authority. As well as policy development and implementation this also involves advising Members and Officers, including those within the Parish/Town Councils, on propriety issues, advising the Standards Committee on applications for dispensations and advising the Standards Committee when they determine an allegation of misconduct on the part of a Member, including a Member from a Parish/Town Council. The maintenance of the Registers of Interests for the District, as well as the Parish/Town Councils, is also the responsibility of the Monitoring Officer, as is the Register of Hospitality.

22. As Members will recall from my last annual report it was agreed that:

- The Committee to consider the implications of the Localism and Decentralisation Bill once it is published.
- The Committee to undertake work relevant to maintaining the current regime until it is abolished or replaced and that the rest of its identified work programme be put on hold until it has considered the Bill further.

23. As a result, this year has been less active and it is fair to say that the passage of the Bill through Parliament has taken longer than expected and the position changes constantly. I will comment on this further.

24. In the period to end October 2011, the Standards Committee has not met but the work of administering the local filter has been the focus of the work this year. Please refer to Para. 19 and Appendix II for details.

MAINTAINING REGISTER OF MEMBER INTERESTS

25. The Monitoring Officer is responsible for establishing and maintaining a Register of Members interests for the District, Parish/Town Councils. The District, Parish/Town Council Register of Members interests are held by the Personal Assistant to the Director of Corporate Services. They are updated periodically as Members advise, and through the Parish/Town Clerks, as well as on an annual basis. The Interests of District Council members are available on the Council's website.

CODE OF CONDUCT FOR EMPLOYEES

26. The Constitution includes a Code for Employees. We had been awaiting the development of a National Code following the latest consultation from the Department for Communities and Local Government. We undertook research amongst the high performing authorities to test whether our Code was 'fit for purpose'. I found that the majority had a Code similar to the Council's and were not considering revising theirs. I decided to incorporate a new Code of Conduct for Employees as part of the constitution review to bring the register of interest in line wherever possible with that of Members. This will be considered further by the General Purposes Committee on 24 October and will be presented to Council on 30 November.

OVERSEEING REGISTRATION OF OFFICER INTERESTS

27. The Monitoring Officer writes to Councillors, Officers of the Management Team or on certain salary grades, or appointed by statute, each year and asks them to complete and sign an annual declaration on related party transactions. This captures transactions between the individual; members of the individual's close family or the individual's household; or partnerships, companies, trusts or any entities (e.g. charities) in which the individual or their close family of same household has a controlling interest. This declaration is asked for in accordance with FRS9 (Related Party Transactions), as contained within the Code of Practice on Local Authority Accounting in Great Britain 1998.

28. In the Annual Governance Report the District Auditor noted that following discussions additional documentation and checks had been introduced to satisfy IFRS and greater management controls. The Chief Finance Officer and I now undertake a full review of the related party transactions.

WHISTLE BLOWING (Protected Disclosure Policy)

29. The whistle blowing policy of the Council is publicised throughout the organisation on the internal Intranet. As a first step, concerns should be raised with the employee's immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. If this is not practical or appropriate then they can be raised with the Monitoring Officer or the Head of Audit. Where appropriate, the matters raised maybe investigated internally, be referred to the external auditor or form the subject of an independent inquiry. The Monitoring Officer has overall responsibility for the maintenance and operation of this policy.

CORPORATE COMPLIANCE WITH LEGISLATION

30. Legal updates, including details of new legislation, are circulated to relevant officers within the organisation. Those officers then circulate legal updates including new legislation to Members when they consider this to be appropriate. All reports have a compulsory heading in which the author has to consider legal implications and if there are likely to be legal implications the author has to seek comments from the Head of Legal. The same procedure follows for any financial implications (the Head of Finance) and human resources (The Head of Organisational Development).

PROTOCOL ON COUNCILLOR/OFFICER RELATIONS

31. The Protocol on Councillor/Officer Relations is contained within the Constitution. This sets out what is expected of Officers and what is expected of Members. When the relationship between Members and Officers breaks down, or becomes strained, attempts should be made to resolve matters informally through conciliation by an appropriate senior manager or Members. Officers will have recourse to the Council's Grievance Procedure or to the Council's Monitoring Officer, as appropriate to the circumstances (as set out in the Constitution).

32. In the last period there have been no complaints of this type to the Monitoring Officer

SUPPORT TO COUNCIL, EXECUTIVE, SCRUTINY AND COMMITTEE MEETINGS

33. The distribution and publication of committee reports, agendas and decisions is central to good governance. This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the access to information rules and exempt information is marked up accordingly.
- Advertising public meetings at least five clear days before the meeting date.
- Ensuring that papers are available to the public either through the website or from district offices and libraries.

- Publishing minutes as soon as possible after the meeting, in particular Cabinet Minutes are published within 3 clear days of the meeting.
- Ensuring that petitions are handled in accordance with the Council's constitution,
- Ensuring that meetings are accessible to the public.

34. One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Council's to focus on service delivery.

35. From 1 November 2010 to 31 October 2011 the following meetings were serviced:

1 November 2010 - 31 October 2011

Name of Meeting	No. of times met	
	Ordinary	Extraordinary
Audit	5	
Council	8	
Cabinet	11	
Cabinet Delegated Decisions	4	
Faversham Local Engagement Forum	4	
General Purposes Committee	1	
General Licensing Committee	2	
Hackney Carriages & Private Hire Vehicles Committee	1*	
Licensing Act 2003 Committee	2	
Licensing Sub-Committee	10	
Local Development Framework Panel	6	
Planning	13	
Planning Working Group	6	
Policy Overview Committee	8	
Rural Forum	4	
Scrutiny Committee	8	
Sheppey Local Engagement Forum	4	
Sittingbourne Local Engagement Forum	4	
South Thames Gateway Building Control Partnership	0*	
Standards Appeals	1	
Standards Committee	3	
Standards Consideration	1	
Standards Hearings Sub-Committee	1	
Standards Referrals	3	
Swale Joint Transportation Board	4	

* From May 2011 the Hackney Carriage and Private Hire Vehicle Committee merged with the General Licensing Committee. The South Thames Gateway Building Control Partnership meetings were administered by Medway Council in 2010/11 but will be administered by Swale in 2011/12.

Total:114 meetings.

36. This represents 114 meetings in total. This compares with 128 in 09/10, 132 in 08/09 and 117 in 07/08. This has been accommodated within existing resources but needs to be monitored. The volume of meetings represents a substantial commitment of both Councillors' and officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Council. Meetings are generally arranged to start at 7pm, as from research this is the preferred time for members. In addition, a timetable of meetings is set each May for the ensuing year, to ensure that Members have as much notice as possible.

Attendance Statistics 1 May 2011 - 31 October 2011

Conservative Group

Councillor	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Cllr Barnicott	21	18	3	85.71
Cllr Sylvia Bennett	8	6	2	75.00
Cllr Bobbin	25	22	3	88.00
Cllr Andy Booth	32	27	5	84.38
Cllr Lloyd Bowen	20	15	5	75.00
Cllr Bowles	19	16	3	84.21
Cllr Derek Conway	27	23	4	85.19
Cllr Mike Cosgrove	13	11	2	84.62
Cllr John Coulter	17	16	1	94.12
Cllr Adrian Crowther	18	18	0	100.00
Cllr Duncan Dewar-Whalley	12	10	2	83.33
Cllr June Garrad	19	15	4	78.95
Cllr Ed Gent	17	12	5	70.59
Cllr Sue Gent	17	15	2	88.24
Cllr Nicholas Hampshire	18	17	1	94.44
Cllr Lesley Ingham	20	14	6	70.00
Cllr Gerry Lewin	19	16	3	84.21
Cllr Peter Marchington	11	9	2	81.82
Cllr John Morris	9	0	9	0.00*
Cllr Bryan Mulhern	21	11	10	52.38
Cllr Prescott	33	26	7	78.79
Cllr Ken Pugh	12	9	3	75.00
Cllr Gareth Randall	13	8	5	61.54

Cllr Pat Sandle	24	18	6	75.00
Cllr David Simmons	15	14	1	93.33
Cllr Brenda Simpson	8	3	5	37.50
Cllr Ben Stokes	10	7	3	70.00
Cllr Anita Walker	10	8	2	80.00
Cllr Ted Wilcox	11	9	2	81.82
Cllr Alan Willicombe	17	15	2	88.24
Cllr Jean Willicombe	21	18	3	85.71
Cllr John Wright	16	14	2	87.50

*Cllr Morris has been granted extended leave of absence due to serious illness but is now resuming his duties

Labour Group

Councillor	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Cllr Jackie Constable	11	7	4	63.64
Cllr Mick Constable	18	14	4	77.78
Cllr Mark Ellen	21	17	4	80.95
Cllr Harrison	13	13	0	100.00
Cllr Mike Haywood	20	15	5	75.00
Cllr Martin McCusker	15	8	7	53.33
Cllr David Sargent	12	6	6	50.00
Cllr Adam Tolhurst	12	9	3	75.00
Cllr Roger Truelove	22	20	2	90.91
Cllr Ghlin Whelan	19	14	5	73.68
Cllr Nick Williams	19	13	6	68.42
Cllr Tony Winckless	11	7	4	63.64
Cllr Worrall	9	9	0	100.00

Independent Group

Councillor	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Cllr Monique Bonney	16	12	4	75.00
Cllr Mike Henderson	20	20	0	100.00

THE FORWARD PLAN

37. The coordination and maintenance of the Forward Plan is central to meeting the requirements of good governance as it enhances open and transparent decision-making.

38. The Forward Plan sets out the key decisions that the Executive will take, on a rolling four-month programme. It is updated and published each month and its use has

been extended to include 'non' key decisions also. The Forward Plan is the key agenda planning document helping Strategic Management Team to keep an overview of the decision making process. In addition, the Scrutiny Panels also use the Forward Plan to identify whether there are any areas that they wish to review, rather than wait to 'call in' a decision.

MEMBER TRAINING AND DEVELOPMENT

39. Democratic Services continue to develop the training and development opportunities for Members following successful achievement of the Member Development Charter. The Member Development Working Group continues to meet and provides direction in the design of a programme to meet Members' needs. There is a separate update report on the agenda.

INDEPENDENT MEMBERS ON THE STANDARDS COMMITTEE

40. Following representations by the Monitoring Officer to Standards for England there has been no change in the independent membership of the Standards Committee; The Independent Member Chairman has yet to be elected for the municipal year 2010-2011.

FUTURE OF THE STANDARDS REGIME – THE LOCALISM BILL

Summary of the Bill

41. The Bill will devolve greater powers to Councils and neighbourhoods and give local communities more control over housing and planning decisions.

Key areas

42. The provisions relating to Councils include:

- giving Councils a general power of competence
- allowing Councils to choose to return to the committee system of governance and allowing for referendums for elected mayors in certain authorities
- abolishing the Standards Board regime and the model code of conduct, and introducing local accountability and a criminal offence of deliberate failure to declare a personal interest in a matter
- giving residents the power to instigate local referendums on any local issue and the power to veto excessive Council tax increases
- allowing Councils more discretion over business rate relief
- providing new powers to help save local facilities and services threatened with closure, and giving voluntary and community groups the right to challenge local authorities over their services.

43. The housing provisions will

- abolish the requirement to have a Home Improvement Pack
- reform the Housing Revenue Account system

- provide for a new form of flexible tenure for social housing tenants
- allow local authorities to discharge their duties to homeless people by using private rented accommodation
- give local authorities the power to limit who can apply for social housing within their areas
- abolish the Tenant Services Authority and provides for a transfer of functions to the Homes and Communities Agency
- amend the way in which a social tenant can make a complaint about their landlord
- improve the ability of social tenants to move to different areas.

44. The planning and regeneration provisions will

- abolish Regional Spatial Strategies
- abolish the Infrastructure Planning Commission and return to a position where the Secretary of State takes the final decision on major infrastructure proposals of national importance
- amend the Community Infrastructure Levy, which allows Councils to charge developers to pay for infrastructure. Some of the revenue will be available for the local community
- provide for neighbourhood plans, which would be approved if they received 50% of the votes cast in a referendum
- provide for neighbourhood development orders to allow communities to approve development without requiring normal planning consent
- give new housing and regeneration powers to the Greater London Authority, while abolishing the London Development Agency.

45. As mentioned above, the passage of the Bill has been longer than originally anticipated and because of the nature of parliamentary drafting it is not always easy to keep up to date with latest developments. However, during the fourth reading in the House of Lords there was considerable discussion on the Member Code of Conduct. I am attaching the Hansard text as Appendix IV to show the detail of the debate. Appendix V details the amendments to be moved on Third Reading of the Bill.

46. In essence, the Localism Bill is at report stage in the House of Lords and Lord Bichard spoke to several key amendments designed to strengthen the approach to standards. The amendments would retain compulsory Standards Committees. They would also remove the proposed criminal offence in the Bill and restore the power for local authorities to suspend members who are found guilty of serious misconduct. It would also be obligatory for all local authorities to adopt a national code of conduct developed by local government, possibly the Local Government Association. The Government saw 'merit in some of the amendments', and to avoid taking it to a vote, promised further discussion prior to the Bill's Third Reading.

47. Under the original proposals (to be implemented via the new Localism bill)

- the entire Standards Board regime will be abolished;
- the Councillors' Code of Conduct will be abolished;

- Standards Committees at a local level will be abolished;
- failing to register an interest, or deliberately seeking to mislead the public about an interest will become a criminal offence;
- if a complaint goes to the Local Government Ombudsman, local authorities will be obliged to implement the ombudsman's findings.

48. Members will no doubt have their own views on this but until final details are clear it is difficult to know exactly how to respond. Lord Bichard sets out in the following quote the issues:

“The amendments before the House in my name do not seek to perpetuate either a national standards board or a centrally prescribed national code of conduct. I accept that a prescribed national code would run counter to the Government's avowed intent to devolve more responsibility to local communities, which I thoroughly welcome. I also accept that the standards board, in spite of some excellent work and some very dedicated staff, has just not made a strong enough case for its retention. While I accept those changes, the impact of the other proposals will, I suggest, be seriously damaging. At a time when the public's trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which make transparent how they will carry out their business and provide benchmarks against which they can be held to account. A sceptical public will otherwise assume the worst. This is all the more important as local Councils are rightly and belatedly given more power through elected mayors and changes in the planning regime. It is absolutely essential in these circumstances that the public have confidence in the people who will take responsibility for those powers if those powers and that devolution are to be sustained as we all want them to be.”

49. The balancing of having appropriate levels of probity and standards with the desire for devolution to local communities will require detailed consideration. Indeed, it is anticipated that through the review of the Corporate Plan greater emphasis will be placed on community involvement and engagement and this will need to be reflected. Any proposed future arrangement should wherever possible be proportionate and less bureaucratic. **It is suggested that once the final provisions are known this Committee consider the implications further.**

USE OF COVERT SURVEILLANCE

50. Since April 2010, in accordance with revised Codes of Practice I am obliged to report the number of occasions the authority has used covert surveillance. The Office of the Surveillance Commissioner (OSC) advised that it was appropriate to include such information within my Annual Monitoring Officer report to members. I am currently reviewing the Regulation and Investigatory Powers Act (RIPA) policy to reflect this and other changes and recommendations of OSC. Since my last report there have been no authorisations for the use of covert surveillance.

CONCLUSIONS AND COMMENTS

51. The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place across the whole of the Council.

52. The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and the public are aware of appropriate channels to raise concerns.

53. Given the comments on the future of the regime, I do not feel it would be an appropriate use of resources at present to do anything other than satisfy the authority's assessment, review and determination responsibilities under the existing regime.

54. IMPLICATIONS

Issue	Implications
Corporate Plan	The role of the Monitoring officer is pivotal to good governance and the corporate priority of becoming a high performing organisation
Financial, Resource and Property	The role is part of the Corporate Services Director's duties; he has access to resources within the organisation to enable him to perform his statutory duties. The issue of costs of investigation under the local filter remains a concern and in the interim arrangements have been made to use the Local Arbitrator and MKIP Partners as a cost effective way of dealing with this
Legal and Statutory	These are set out in Para 2 of the report
Crime and Disorder	Not directly relevant to this annual report
Risk Management and Health and Safety	None directly arising from this annual report.
Equality and Diversity	The authority's governance framework is underpinned by the Corporate Equality and Diversity Policy and procedures
Sustainability	None directly arising from this annual report

APPENDICES

56. The following documents are to be published with this report and form part of the report

- Appendix I: summary of changes to Constitution
- Appendix II: summary of complaints under the Code of Conduct
- Appendix III: annual complaints report to Executive
- Appendix IV: Extract from Hansard record of debate in the House of Lords 14 September 2010

RECOMMENDATIONS

57. That the Standards Committee notes this report and the following action points:
- The Committee to consider the implications of the Localism and Decentralisation Bill once the final provisions are known.
 - The Committee to undertake work relevant to maintaining the current regime until it is abolished or replaced and that the rest of its identified work programme be put on hold until the position is clearer.

Mark Radford
Corporate Services Director & Monitoring Officer

Date: 04 November 2011

SWALE BOROUGH COUNCIL

AREAS FOR FUTURE REVIEW TO THE CONSTITUTION	
Issue	Commentary
Monitoring Officer Delegation	The current delegation means that no changes to the Constitution can be made unless agreed at full Council. It has been agreed that this will be reviewed again by General Purposes Committee (GPC).
Ward/Individual Decision Making	GPC agreed that this should not be included in the Constitution at this stage. It was agreed to consider further once the Localism Bill provisions were clearer.
Protocols to be developed	The following will need to be prepared/reviewed: <ul style="list-style-type: none"> ➤ Local Authorities Entities ➤ Use of Resources and Support ➤ Facilities for Members ➤ Members Access to Information ➤ Monitoring Officer ➤ Gifts and Hospitality
Joint Arrangements	Further work to be undertaken to identify those organisations falling within the definition for inclusion in the Constitution.
Officer Delegations	Substantially agreed.
Financial Standing Orders	Contract Standing Orders approved at Council on 12 January 2011, further work required on Financial Standing Orders
Public Participation Rules	Deferred to consider implications around any revised Code of Conduct
Executive procedure Rules	To be reviewed and considered further

Complaints received under the Code of Conduct 2009

Compliant no.	Decision Notice – No further action	Appeal – No further action	Reference to Monitoring Officer	Decision – No breach of Code
1	√	√		
2	√	√		
3	√	√		
4			√	√
5	√			
6			√	√
7	√			
8	√			
9	√	√		
Total	7	4	2	2

Complaints received under the Code 2010

Compliant no.	Decision Notice – No further action	Appeal – No further action	Reference to Monitoring Officer	Decision – No breach of Code
1	√			
2	√	√		
3	√	√		
4	√	√		
5			√	√
6			√	√
7			√	√
8	√	√		
9	√	√		
10			√	
Total	6	5	4	* Breach of Code Sanction Imposed

*Note Complaints 5-7 and 10 currently under investigation

Update on 2010 cases:

Please note complaints 5-7 Decision No Breach of the Code

Please note complaint 10 Decision No Breach on one allegation (para 12) but A Breach of the Code of Conduct - Sanction Imposed on Paras 5 & 9.

Complaints received under the Code 2011

Compliant no.	Decision Notice – No further action	Appeal – No further action	Reference to Monitoring Officer	Decision – No breach of Code
1	✓	✓		
2	✓	✓		
3	✓			
4	✓			
5	✓			
6	✓			
7	✓			
8	✓			
9			✓	
10			✓	
11	✓			
12			✓	
Total	9	2	3	*

***Note Complaints 9 & 10 and 12 currently under investigation**

Cabinet Meeting	Agenda Item: X
------------------------	-----------------------

Meeting Date	
Report Title	Complaints Annual Report 2010/11
Portfolio Holder	Cllr Mike Cosgrove
SMT Lead	Dave Thomas
Head of Service	Dave Thomas
Lead Officer	Dave Thomas
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	Members are asked to note the report

1. Purpose of Report and Executive Summary

- 1.1 This report presents the second annual summary of complaints, compliments and comments received by Swale Borough Council during the year from April 2010 to March 2011.

2. Background

- 2.1 Following the presentation of the first annual report to Executive on 6th October 2010, significant work has been undertaken to overhaul the systems used by the Council to record complaints, compliments and comments (CCC) to provide clearer access to the system by our customers, provide improved monitoring so we can be assured that all complaints are logged, tracked and responded to and improved reporting facilities so we can learn from feedback and ensure that our response times are meeting the standards we have set. We have:

- 2.1.1 Reviewed the system and provided revised procedure notes;
- 2.1.2 Carried out mandatory training on complaints handling for all relevant managers and staff;
- 2.1.3 Developed a monthly summary report for Heads of Service to enable regular monitoring of progress of complaints in their respective service areas;
- 2.1.4 Developed a quarterly report on complaints as service level which will be used to inform the quarterly performance report, and

- 2.1.5 Asked Heads of Service to record and report examples of service improvements which have been initiated in response to customer complaints, comments and compliments.
- 2.2 The residents survey indicated that a significant number of our customers were not clear on how to formally complain to the Council. We have responded to this by revising all of our documentation, providing a dedicated page on our website at <http://www.swale.gov.uk/comment-complain-and-feedback/> and by initiating a review of all of our outgoing printed and electronic correspondence to customers to ensure that the complaints procedure is clearly explained in case it is required.
- 2.3 During the recent Customer Service Excellence assessment, acknowledgement was given to Swale's new complaints system citing it as an example of good practise. It was recognised that there is still work in progress in relation to the process of which recommendations may be included from the assessor in the final report from them.
- 2.4 The new ICT system was introduced on a pilot basis late in 2010 and staff training sessions have been held so that all staff involved in the complaints handling system are clear on how to use the system and what must be recorded and the standards required in handling customer complaints.
- 2.5 Formerly there were three types of complaints which were all held in a common database in the Northgate Front Office system:
- 2.5.1 Local complaints were those which are received directly by the specific service areas and contain very specific issues pertinent to the appropriate service (e.g. complaints relating to Housing Benefit assessment outcomes). These are entered onto the system by the relevant service areas.
- 2.5.2 Complaints, Compliments and Comments (CCCs) were those which are reported directly to the customer service centre. They are entered onto the system on receipt by the Customer Service Team, email alerts are sent to the nominated service representatives and Head of Service for progression. The service area is responsible for entering a resolution date onto the system.
- 2.5.3 Corporate Complaints were those which have been escalated to the Chief Executive, Leader or ultimately, the Ombudsman.
- 2.6 Whilst the method of administration of the new system is similar, the complaints systems has been simplified to be a clearer four stage process:
- 2.6.1 Stage 1 – This is the first stage whereby a complaint relating to a service should first be made to the service area it relates to.

2.6.2 Stage 2 – This is the first level of escalation, whereby the complainant is not satisfied with the response (or lack of response) from the service area or the complaint relates to a member of staff.

2.6.3 Stage 3 – The next level of escalation (to the Council’s Independent Arbitrator), who will first establish if the stated levels of escalation have been followed before investigating the complaint himself.

2.6.4 Stage 4 – The final level of escalation (to the Local Government Ombudsman) if the complainant is not satisfied with the way in which the Council and the independent arbitrator has dealt with their complaint.

2.7 The revised system ensures that all complaints are logged and tracked in a central repository within our Customer Relationship Management (CRM) system, administered by the Customer Service Team.

2.8 As there was a changeover during the year to the new system, there needs to be a health warning on the statistical data summaries for the year as the data from the old and new systems has been merged to provide the analyses.

2.9 The total number of CCCs received during 2010/11 was 639 compared to 561 in 2009/10. Whilst the number of complaints reduced slightly (-7%), there was a significant increase in the number of compliments recorded (86%).

	2009/10	2010/11
Complaints received	393	364
Compliments received	126	235
Comments received	42	40
Total	561	639

2.10 The vast majority of complaints were resolved at the first stage of the process, with 10 having been escalated to Stage Two (Chief Executive) and 12 having been referred to the Ombudsman. These figures are in line with last year’s numbers.

	2009/10	2010/11
Total complaints	393	364
Justified complaints*	80	160

Non justified complaints*	313	201
Partially justified		1
Justification not stated		2
Escalated to stage 2 (Chief Executive)	11	10
Escalated to stage 3 (Local Arbitrator)	Data unavailable at time of report	3
Escalated to stage 4 (Ombudsman)	12	12

**Definition*

Justified: where it is deemed that the relevant process/procedure has been followed.

Unjustified: where it is deemed that the relevant process/procedure has not been followed.

It should be noted that this criteria is open to the interpretation of the officer and their opinion at the time of completing the complaint.

2.11 With the previous system, we only measured responses against complaints which were found to be justified. In 2009/10, 85% of justified complaints were dealt with within the stated target of 10 working days. Since the new system was introduced part way through 2010/11, all complaints require a response, whether they are valid or not. This has impacted on the performance levels in terms of response this year, with 63% of all complaints being responded to within 10 days, though 73% of justified complaints were responded to within the target. Clearly work needs to be done on improving this response rate, and the measures put in place with more effective monitoring and reporting, in particular the automated reminders sent to Heads of Service, have seen a significant improvement during recent months. Analysis is to be carried out to identify service areas who are not meeting the targets.

2.12 We are awaiting the Ombudsman's Annual Report for 2010/11 (due in July), but his initial draft report indicates that of the 24 complaints submitted relating to Swale Borough Council, nine were premature (i.e. they hadn't followed Swale's published processes first and two were resolved by providing advice). It is anticipated that following the improved clarity and access to Swale's complaints system, there will be fewer cases prematurely referred to the Ombudsman for not having been properly escalated first.

	2009/10	2010/11
--	---------	---------

Rejected as being premature	7	9
Informal advice given	0	2
Investigated	12	13
Total	19	24

2.13 Of the 13 complaints that were formally investigated by the Ombudsman six were found not to be cases of maladministration, five were not pursued at the Ombudsman's discretion (the most usual reasons for these are no or insufficient justice to warrant pursuing the matter) and one was a discontinued following a local settlement. Until the full report is received, it is not possible to make comparisons with other authorities, but based on last year's statistics this represents very good performance by Swale Borough Council. Significantly, there were no cases of maladministration.

	2009/10	2010/11
Not pursued at Ombudsman's discretion	3	5
Found to be no maladministration	5	6
Discontinued following local settlement	3	1
Outside of Ombudsman's jurisdiction	1	0
Still in progress	0	1
Total	12	13

2.14 In summary therefore, of the 364 complaints received by the Council during 2010/11, only 2.7% were escalated to the Chief Executive, and 3.2% were ultimately referred to the Ombudsman; none of which resulted in finding evidence of maladministration.

2.15 Another aspect of effective complaint handling is to inform service improvements. Whilst the new system is still in its relative infancy, it is intended that we are able to record examples of where service improvements have been implemented as a direct result of customer feedback. Some early examples of this are as follows:

2.15.1 Cleansing Service – Following a constructive complaint from a resident of Clyde Street in Sheerness, wheeled bins were provided in a block of flats to positively impact on the littering problems in that area.

2.15.2 Website – Following complaints and feedback from users of the Council's website that they found it difficult to navigate and find the required information, the site is being redesigned to provide improved navigation facilities.

2.15.3 Refuse service – In response to a complaint from an elderly resident in Selling who was having great difficulty manoeuvring her standard 240 litre wheeled bin, a smaller 140 litre was provided, and these are now available for other customer who experience similar difficulties with the larger standard sized bins.

2.15.4 Environmental Response - The main trend here is about how people are spoken to, having investigated this further. This has been discussed with staff and some individuals have been on training courses to improve their listening and communication skills and general customer liaison. Customer feedback forms have also been introduced of which from customer responses customers are now informed of the outcome of their enquiry.

3. Future enhancements

3.1 Further enhancement opportunities have been identified of which will be implemented during 2011 – 2012 which include

3.1.1 Facility to log/record complaints referred to the Arbitrator

3.1.2 Facility to include fines/compensations paid and the costs incurred

3.1.3 Review of the justified/unjustified classification and the use of this, do we need to classify our complaints or should we just accept them as a mechanism to learn from customers views and experiences.

3.1.4 A complaints and feedback standard message to be agreed and included on letters, documentation and the website to ensure customers are aware of methods to give us their views.

3.1.5 Sample surveying of customers who have felt the need to complain to seek satisfaction levels.

3.1.6 Link service unit/area complaints to portfolio holder.

4. Proposals

4.1 Members are asked to note the contents of this report.

5. Alternatives

5.1 None.

6. Consultation

6.1 None.

7. Implications

Issue	Implications
Corporate Plan	Supporting the <i>"Becoming a high performing organisation"</i> priority
Financial, Resource and Property	None.
Legal and Statutory	None.
Crime and Disorder	None.
Risk Management and Health and Safety	None.
Equality and Diversity	Responding to complaints in a positive and effective manner demonstrates the Council's commitment to ensuring that access to Council services is available to all.
Sustainability	None.

8. Appendices

8.1 Local Government Ombudsman's Review of Swale Borough Council 2010/11.

9. Background Papers

9.1 Reports extracted from the complaints system database.

9.2 The Local Government Ombudsman's Review of Swale Borough Council 2010/11.

Dave Thomas,

Head of Commissioning and Customer Contact,

23rd June 2011

**Localism Bill
Report (4th Day)**

8.39 pm

Schedule 4 : Conduct of local government members

Amendment 166

Moved by The Earl of Lytton

166: Schedule 4, page 267, line 32, leave out sub-paragraph (2)

The Earl of Lytton: My Lords, not having spoken previously at this stage of the Bill, I declare an interest as president of the National Association of Local Councils and as president of one of its county associations.

The intention behind Amendments 166 to 169 is simply to prevent Schedule 4 to the Bill repealing what I believe are useful parts of the Local Government Act 2000. It may be for the convenience of your Lordships and make for a more coherent debate if I do no more than move Amendment 166 at this juncture and then, with the leave of the House, speak to the detail of the amendments in the group after the noble Lord, Lord Bichard, has spoken to his Amendment 175. I trust that your Lordships will permit that.

14 Sep 2011 : Column 826

Lord Bichard: My Lords, I first thank my noble friend Lord Lytton for allowing me to lead on this group of amendments. The amendments that I shall speak to today go to the heart of effective and credible local governance. In others words, they are neither technical amendments nor desirable but non-essential. That is why they have obtained support from across the House. Without them there is a serious risk that the progress on standards of conduct that has undoubtedly been made in local government in recent years will be lost. If that happens, it will damage not only local citizens and the reputation of local government but the Government and Parliament.

As currently drafted, the Bill proposes placing a new general duty on Councils to promote and maintain high standards. At the same time, it proposes to abolish the standards board for England and the national code of conduct. It proposes to let each Council choose whether to have a code of conduct and, if they do, what to include in it. It proposes that the current requirement for standards committees with independent members should be removed. It proposes removing the powers to suspend members

who have breached the code. Finally, it would introduce a new criminal offence of failing to register or declare a pecuniary interest.

The amendments before the House in my name do not seek to perpetuate either a national standards board or a centrally prescribed national code of conduct. I accept that a prescribed national code would run counter to the Government's avowed intent to devolve more responsibility to local communities, which I thoroughly welcome. I also accept that the standards board, in spite of some excellent work and some very dedicated staff, has just not made a strong enough case for its retention. While I accept those changes, the impact of the other proposals will, I suggest, be seriously damaging. At a time when the public's trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which make transparent how they will carry out their business and provide benchmarks against which they can be held to account. A sceptical public will otherwise assume the worst. This is all the more important as local Councils are rightly and belatedly given more power through elected mayors and changes in the planning regime. It is absolutely essential in these circumstances that the public have confidence in the people who will take responsibility for those powers if those powers and that devolution are to be sustained as we all want them to be.

However, a discretionary system will have other dis-benefits. Inevitably, it will mean that standards are discretionary and that they are not a priority. As Councils adopt different arrangements across the country, and they inevitably will, the public and business will find it difficult to understand what is to be expected from their particular authority or the authority with which they are doing business. Worse still, the authorities that do not take standards seriously will of course be least likely to adopt a code with any kind of rigorous content. That will result in damage not just to the reputation of that particular Council, but to the reputation of local government as a whole. There will be some who argue that all Councils would naturally and voluntarily adopt a code, so we really do not need a mandatory

14 Sep 2011 : Column 827

requirement. But in my recent research I have found a number of Councils already showing great willingness to jettison any sort of code. We need to take account of that.

For all of those reasons, a national code of conduct is necessary. Not one prescribed by the Secretary of State and imposed on local government, but one developed by local government in accordance with the principles of public life and adopted by all Councils. That is the purpose of my Amendment 175.

If we are to have a mandatory code, there does need to be some leverage to ensure that it is taken seriously. The proposal to remove the current requirement for a local standards committee with independent members, to monitor the implementation of the code and, where necessary, to suspend members who are in breach, will take away an important influence. In addition, it will further feed the scepticism of those members of the public who believe that Councillors are, frankly, in it for their own good. Amendments 177 and 178 therefore seek to reinstate a local standards committee with a right of appeal for members found to have fallen foul of that code. There is scope for discussion

of the precise nature of those standards committees, so as to reflect the particular characteristics of a local area or local authority, but standards committees must be reinstated.

My Amendments 179 and 188 concern the proposed introduction of a new criminal offence for failing to register or declare a pecuniary interest, which is also the subject of further government amendments. The problem with this proposal as it stands-and this is not resolved by the several amendments on the Marshalled List-is that it applies only to pecuniary interests, and covers only the elected member and their spousal partner. Consequently, Councillors will only need to declare registered pecuniary interests where they or their partner directly benefit financially. If they fail to do that, no matter how minor the interest, they will have committed a criminal offence. However, elected members would not need to declare non-pecuniary interests or the interests of other members of their family. To put this in context, an elected member could vote for their son's planning application with impunity. The proposals, as they stand, leave unregulated most of the previous examples of malpractice where there have been attempts to manipulate the planning, licensing and housing systems. One of the consequences of this will, I have no doubt, be that Councils will run a far greater risk of legal challenge over decisions that are perceived to be biased.

I have been heartened by the widespread support that I have received for all these amendments-not just across the House but outside too-from the independent Liberal Democrat and Labour groups on the Local Government Association, the Law Society, the Society of Local Authority Chief Executives of which I used to be a member, the Chartered Institute of Public Finance and Accountancy, the Association of Council Secretaries and Solicitors, the Society of Local Council Clerks and the National Association of Local Councils. Let us not forget that these same issues affect town and parish Councils, as the noble Earl, Lord Lytton, will I am sure remind us shortly. All those respected organisations support these

14 Sep 2011 : Column 828

amendments. However, they are also tellingly supported by Sir Christopher Kelly, the chairman of the Committee on Standards in Public Life, who said recently that the Government's proposals as they stand,

"risk lower standards and a decline in public confidence".

As I said at the outset, a great deal of progress has been made in recent years to improve the standards of local governance, but that is not to say there have been no transgressions-there have been-and none of us should ever be complacent. Thirty years ago I was the chief executive of the London Borough of Brent-not something that I widely advertise but many Members of the House will recall it. There I witnessed at first hand some of the most serious failures of conduct and behaviour. Of course, at that time they were not confined to the London Borough of Brent. None of us expects to see the return of such things, but explicit transparent codes are critical parts of the machinery to prevent that ever happening again.

You can-and I have long argued that you should-devolve decisions about the level of services. You can and you should devolve decisions about the cost of services and the way in which the needs of local communities are met. However, you should never ever devolve the question of whether probity is a priority. You should never make standards discretionary.

Lord Greaves: My Lords, I have one amendment in this group, Amendment 170A, to which I shall speak in a minute. I congratulate the noble Lord, Lord Bichard, on his extraordinarily good presentation of the issues that lie behind his amendments. Like other members of the Liberal Democrats here I fully support them. I also thank the Minister and his colleagues, as well as the Bill team, for the amount of time and commitment that they have given to discussions-certainly with us and, I think, right around the House-on this and other issues, in order to try to find a compromise and a way forward that satisfies the wish of the Government to dismantle the national bureaucracy of the Standards Board for England. We all want that to happen without compromising the fundamental principles behind standards in public life in local government that the noble Lord, Lord Bichard, has ably set forward.

My amendment, which I shall speak to briefly, is about parish and town Councils. The noble Earl, Lord Lytton, will follow up to talk about them also. I have not seen any statistics but all the anecdotal evidence from areas with a lot of parish and town Councils is that standards problems at that level of local government take up a remarkably large proportion of the time of, and the cases that come to, local standards committees. The reasons are obvious: a lot of parish Councils are only small, they have clerks who are very much part-time and they simply do not have the expertise or, very often, the authority to deal with what are sometimes leading local personalities who do not take kindly to being told what to do and how to do it. Whatever the reason-and I do not think that it is through a lack of willingness by parish Councils to deal with this problem and to cope with it; the issue is their ability or competence to do so-they take up a lot of time and a high proportion of the time of standards committees. The proposals as put forward by the Government simply

14 Sep 2011 : Column 829

do not seem to recognise this, because they suggest that parish and town Councils can simply look after their own standards regime and their own standards system as a freestanding authority. Unfortunately the truth is that this will simply lead to a collapse of any proper standards system in a large proportion of these Councils. It may be that large town Councils will, in many cases, be able to cope-and some others will cope-but there will be a serious problem.

My amendment simply suggests-and it is designed to fit into the Bill as it exists at the moment, unamended-that whatever system there is within a district or unitary authority should also apply to the town and parish Councils within that area, which is the present system. That may not be the best way to solve the town and parish Council problem, but a solution has to be found before the Bill leaves this House. I understand that the Minister will promise more discussions on parish Councils, in particular, before Third Reading and if that is the case, I do not want to say anything more today, but it has to be

sorted out and a solution found which will work in all town and parish Councils, which vary from quite large town Councils of, perhaps, 10,000, 20,000 or 30,000 people right down to little parishes of 200 or 300 electors. I have nothing more to say about that; I look forward to discussions that the Minister is going to offer us at the end of this debate.

Lord Newton of Braintree: My Lords, I have two possible speeches, upon which I thought I might seek the opinion of the House. One is the two-hour, scripted version and the other is the two-minute, unscripted version. I do not think that I need to seek the opinion of the House before I know which they would prefer, and it will be the shorter one.

My name is on this amendment and not by accident. I feel quite strongly about it, I support it, I agree with every word that the noble Lord, Lord Bichard, has said in favour of it. However, a number of little birds have whispered to me during the last few days that there has been a lot of talking behind the scenes—indeed, one or two people have even spoken to me—and I share my noble friend Lord Greaves's understanding that there is a willingness to undertake discussions across the whole range of issues, including whether there should be a code, what machinery there should be and some of the detail and the nature of the points on the criminal offence. In those circumstances, I would not wish to make trouble tonight.

I very much hope, therefore, that my noble friend on the Front Bench will indeed offer such discussions on a wide-ranging basis, covering the whole breadth of the issue, bearing in mind that we are not looking for confrontation; we are looking for a satisfactory outcome without shutting off the possibility of raising matters at Third Reading should we find it not possible to achieve a reasonable agreement. If my noble friend responds in that spirit, I shall go quietly, certainly for tonight. If he does not, I am aware that I am slightly burning my boats because I shall not be able to speak again, but I can tell him that I will do my best to make life hell for him in his winding-up speech. I look forward to his conciliatory gesture in quick order.

14 Sep 2011 : Column 830

Lord Tyler: My Lords, I share the optimism of the noble Lord, Lord Newton of Braintree, that we are this evening going to come to some sensible consensus on the way forward. I particularly applaud those noble Lords who have tabled amendments this evening, because I think that they are extraordinarily important; they are the very heart of our local democracy and I hope that they are going to receive a very positive response from my noble friends on the Front Bench.

9 pm

I want to make one modest, and, I hope, relatively succinct contribution to the debate based on my experience as a county Councillor many years ago but, more recently, as a

constituency Member of Parliament. I want to ensure that in disposing of the present regime within which standards are maintained in local authorities, we should not throw out a lot of important babies or even, perhaps the wrong bathwater-that was the analogy used in the previous debate and it is even more appropriate here.

As I understand it, my noble friends who are responsible for taking the Bill through the House are carefully considering ways in which standards of conduct can be maintained at local authority level. That has already been hinted at and I very much welcome that. I am very concerned that we avoid the worst features of the present regime applied by the present Standards Board for England. I endorse what the noble Lord, Lord Bichard, said about the Standards Board for England but, unfortunately, the road to hell is paved with good intentions and I have direct experience of a number of episodes where the present regime has been most unfortunately and unproductively attempting to meet those objectives. All too often, the board has catered for-even encouraged-persecution of whistleblowers. I refer to one instance in Cotswold District Council.

I know that many Members of your Lordships' House are avid readers of *Private Eye* and I have no doubt that they all attend carefully to the "Rotten Boroughs" section of that estimable organ, as I am sure it would regard itself. This issue is extremely important because it indicates that some of the problems that we had thought had disappeared-I endorse the long experience of the noble Lord, Lord Bichard-are still there. Put briefly, in this case, one assiduous Councillor, doing precisely what electors expect of him, has been proved right in identifying potentially illegal activity, but instead of supporting, encouraging and endorsing his successful attempts to bring illegality into the open, leading members of the Council and officers would appear to be determined to use the Standards Board for England as a way of tying him up with a ludicrously trivial investigation.

That is not a lone example. I have seen that happen time and again with large and small authorities-from Westminster City Council down to a small Council in my then constituency-when apparently disreputable actions of a few leading members or officers of a Council have been exposed by a whistleblower, but their reaction has been to seek to silence him or her. Instead of welcoming transparency and remedial action, there have been persistent attempts to silence such dissent by claiming that their activities brought the Council into disrepute. I am sure that there will be

14 Sep 2011 : Column 831

Members of your Lordships' House on all sides who will agree that if a Council, in whatever way, is disreputable, it deserves to be given that description and that it is not the Council that is being brought into disrepute by the dissident member but the behaviour of the Council itself in whatever way.

This has often happened where one political party has been in control of the Council-no doubt, any political party-without proper challenge for years and years, but that all too often has meant that the local establishment has tried to use the Standards Board as part of its political weaponry. That is not the intention of the legislation that we are considering repealing this evening, but it is its practical effect.

My anxiety now is that we must ensure that any new code, disciplinary framework or right of appeal should take careful account of the bitter experience that so many of us have had of trivial complaints to the Standards Board, which have been used as a means to gag those who are simply undertaking the first responsibility of an elected member: to act as a watchdog for the public interest. I hope that my noble friends on the Front Bench will be able to reassure me that, in the new format or regime or code of conduct or whatever that emerges from the current discussions, we will be watchful of that essential element in our public life.

Lord Best: My Lords, I declare an interest as a member of the standards committee of Westminster City Council and as president of the Local Government Association, but I do not speak in either of those capacities. I just wanted to add, from my knowledge of the Local Government Association, that if there is to be a code of conduct-and the arguments for that have been very well put by noble Lords-I believe that the Local Government Association is extremely well equipped to draw up an entirely sensible code and to gain the approval for this from all local authorities. I, too, look forward to hearing the Minister's ideas for taking this forward.

The Earl of Lytton: My Lords, if your Lordships will excuse a slight déjà vu and second time round, which I know is a trifle out of order, I will now, with the benefit of the excellent introduction given by the noble Lord, Lord Bichard, to Amendment 175, drill down a little bit into the issues that I think are important, which specifically focus on parish and town Councils.

To explain this, and my comments, it is necessary to go back to Section 53 of the Local Government Act 2000, which states at Section 53(1) that,

"every relevant authority must establish",

a standards committee. However, Section 53(2) exempts parish Councils from that duty. Why? For the very practical reason that the mandatory creation of 9,000 dedicated parish Council standards committees across the country would be something of a nightmare, as well as a very considerable duplication of something that is already done via the standards committees of principal authorities. This would be disproportionate and unaffordable, especially to very small parishes. Parishes currently utilise the district and unitary authority standards committees to avoid just this problem and I

14 Sep 2011 : Column 832

am not aware of any suggestion that this does not work tolerably satisfactorily.

Paragraph 11(2) of Schedule 4 to the Bill removes the parish exemption. Therefore, the use of principal authority committees is lost and, as I see it, this gets us back to this mandatory appointment of the 9,000 parish committees. In fact, this creation of a mandatory committee would be a first because there is no other measure that obliges parish and town Councils to create any committees. This would be something of a novel departure. I felt that that was not good, and so my Amendments 166 to 169 were intended to prevent that happening.

What happens at parish and town Council level, as the tier that stands to be a major beneficiary under the process of localism espoused in this Bill, is of course very significant. As the noble Lord, Lord Bichard, has pointed out, this tier will potentially wield far greater powers, command much larger resources and have custody of greater amounts of taxpayers' money and assets on behalf of the communities. The public generally will expect a seamless, effective and enforceable regime of standards, particularly given what we have all read in the media in recent months and years. In answer to the point made by the noble Lord, Lord Greaves, parish and town Councils need to raise their game and this is going to take a little bit of time. I do not think that we can expect an instant fix.

I support the principle of clear, proportionate and enforceable standards that apply at parish and town Council level. The National Association of Local Councils supports it. Together, we regard it as the basic hallmark of integrity and coherence, and indeed as the basis of public confidence in local government at all levels.

Therefore, I am extremely pleased that the noble Lord, Lord Bichard, has tabled Amendment 175. I very much support it in its entirety and I can confirm that the National Association of Local Councils does as well. The fact that the amendment restates the Nolan principles is itself particularly welcome, and I do not think that anyone could argue with that. After all, we all sign up to principles that look like that when we take the oath or affirm on entering this House. However, sometimes I think that the rather basic aspects of motherhood and apple pie come in with the recitation of these Nolan principles. I know that a lot of this is contained in regulation elsewhere, but I do not think that it is to be found in any Bill and it is about time that it was stated. Sometimes one has to state these basics to avoid the problem of constantly trying to rewrite and amend legislation. You need an anchor point to go back to.

The amendment opens up a broader issue of how minimum levels of standards should apply, the manner in which they are to be observed and, ultimately, the criteria for their enforcement. It is all very well having standards but there has to be an enforcement process. If I have one slight objection to Amendment 177, it is that it appears to make standards committees mandatory for every relevant authority. As I see it, a relevant authority would, in this context, include parish and town Councils, so we get back to the 9,000 committees that I am trying studiously to avoid.

14 Sep 2011 : Column 833

Having realised that there is a general problem, the Government have tabled a series of their own amendments, which will come up later-Amendments 181 to 187. Although I have some reservations about those amendments-in some places they go too far and in others they do not go far enough-it is none the less a welcome affirmation that something needs to be done.

I finish by making a few suggestions about how I think standards should operate in practice for parish Councils. First, they need the oversight of a standards committee, much as at present, and I think that we have to re-establish that. Secondly, the time has come for an accepted base line of generic standards to be stated in legislation, as I said earlier. I think that those standards need to be consistent across the board-throughout large and small parish and town Councils. I do not think that we can get away from a need to have a consistent approach. They need to be based on a requirement both to register interests and to declare them at the appropriate moment-not one or the other. The requirement must not be weak or full of loopholes. Any family business or other interest-whether personal or relating to an associate and within a defined proximity which should be neither too narrow nor too wide-needs ultimately to be declarable. Just because a pecuniary interest has to be declared, I do not think it follows that the person declaring it should thereby be immediately excluded from all further discussion. He or she may be the one person who can throw some light on a complicated issue. However, I accept that it is almost certainly not appropriate for them to take part in any vote on the matter. I suspect that here a little discretion needs to be vested in the chairman, probably backed by some sort of standing orders. I just leave that in park for the moment.

A disproportionate cost in any of the administration of this is going to be a considerable enemy. As I pointed out yesterday in conversation with the Minister, undue complexity is the smokescreen for sharp practice, and I think that we want to avoid both those pitfalls.

I fully agree with the noble Lord, Lord Bichard, that standards in our procedures need to be enforceable and have sanctions that mean something. That said, I think that making a failure to register an interest an automatic criminal offence, regardless of circumstances, goes too far. I accept that some types of sanction will need to be subject to a right of appeal and I can see why Amendments 178 and 179 have been tabled in that respect. However, I enter a plea: can we keep all but the most exceptionable lapses out of the courts while retaining effective measures to ensure that an elected member complies? I have a pathological fear of things being tied up in court proceedings.

At present we have a statutory code made under regulations under the 2000 Act. I have not heard anything to suggest that this code is considered to be a bad one, but I accept that the imposition of a code by the Secretary of State sits ill with the ethos of the Bill. However, getting rid of the code in the interests of non-centralism, if I can put it in those terms, does not of itself make for the advancement of localism. We need to preserve what is good, even if it has somehow to be rebranded. Parliament should set the basic criteria

14 Sep 2011 : Column 834

for standards, of course, and that is the point being made here, but it does not need to make the detailed rules. I sympathise with the Government not wanting to hand down prescriptions from on high. We will not necessarily get a perfect solution, which touches on something mentioned by the noble Lord, Lord Tyler, but with a bit of collective thought we can probably get somewhere quite close to it.

My final comment concerns one of detail in respect of Amendment 177. In so far as standards committees have under their consideration the affairs of a parish or town Council, I would like it to be understood that in the interests of fair representation, at least one member of that committee should be from another parish Council within the same district. If I have forgotten anything, I hope that others will pick it up, but I have said quite enough for an intervention and a half.

9.15 pm

Lord Filkin: My Lords, like the noble Lord, Lord Bichard, and my other co-supporters of this group of amendments, I think we are pleased with the way in which this House has approached these issues. We have done so as far as we possibly could on a non-party basis, and that is why there are signatories to the amendments from all four corners. For obvious reasons, public standards matter too much simply to be treated as a party-political football issue. What is also remarkable is the depth of support that has been shown by local government for these amendments. The argument was put to me that local government want the changes being brought forward in the Bill. All I can say to that is: how is it that three of the four Local Government Association party-political groups have expressed explicit support for these amendments? Every single one of the major local authority professional bodies supports these amendments, as has the Law Society. It is almost inconceivable that such a strong coalition of support should arise for what to some would seem to be such an arcane and specialised issue.

The Government are not foolish and they can see what is at risk if these issues are put to a vote. Wise Ministers in this House always listen and are flexible, and therefore as a result of conversations that took place perhaps slightly late-but they did happen so we are grateful for that-there has been, as you can sense by the mood and the number of noble Lords in the Chamber, a willingness on both sides to move away from adversarial politics towards a proper process of seeking to try to improve the Bill and achieve the objectives that I believe most people wish for it. I thank Ministers for that and look forward to the response.

I would not normally go further because for obvious reasons it is bad manners to shoot people's foxes, but I need to give a little hint of what I have total confidence the noble Lord, Lord Taylor, is going to say. I do so because it bears explicitly on the issue that I want to do no more than signpost at this stage. A good standards regime requires four things. First, it requires some very clear principled and comprehensible standards. Nolan and his work gave us the foundation for so many codes in public life; we would be mad if we moved away from that. Most of us believe that such standards ought to

14 Sep 2011 : Column 835

be universal, albeit leaving the freedom to make local additions, but not subtractions, from those fundamentals. You need an appropriate process for addressing these issues. Clearly there is room for considerable debate and probably an improvement on the current systems. You then need appropriate sanctions, which is what I shall talk to. Lastly, if you have any significant sanctions, ECHR will say that you need some sort of

light-touch and proportionate appeals process so that fairness can be seen to be done. Those are the four elements of an effective sanctions regime.

Let me test the patience of the House for a short while by talking about sanctions. One of the most surprising issues in the Bill is that it introduces a criminal sanction, when there has never been an explicit criminal sanction over and above how the criminal law already sits. I have looked high and low to find strong, genuine supporters for this. I have found only one I am certain of, and I will not mention who that is. I wondered why it was seen as so important that there was such a strong sanction—a criminal sanction—introduced, when nobody else seemed to think it was necessary.

I think it may go back to the wish energetically to sweep away as much as possible of the architecture and process, which may have become slightly baroque as a consequence of the years, and not to preserve even, to torture my analogy, some Romanesque purity underneath. One can envisage that a wish to get rid of any national code, and to leave local authorities totally free to decide whether they had a code or not—you could hardly make it up—would perhaps be seen as a step too far, and completely unwise, unless there was some signal that the Government were serious about this issue. Enter the criminal sanction.

But the criminal sanction is no longer needed. The noble Lord, Lord Bichard, explained why it was inappropriate and ineffective, because it did not bear down on some of the most serious potential issues. That should worry us all. But it is inappropriate now because of what I believe we will hear from the noble Lord, Lord Taylor. I believe we will hear a recognition that every local authority has to have a standards code, and every code must contain some mandatory elements. If he does say that, I think there will be general rejoicing around the House, and then we will work on the detail of what should be in the code, and who should make it. That is all good stuff. We will at least start from a point of sanity. It is surprising that one would actually celebrate the achievement of that, because to some of us it would seem to be the most blindingly obvious piece of common sense that you would not even spend five minutes arguing on. But putting that to one side, we are glad of where we are moving to rather than regretting where we have been.

If, then, every authority is to have a code, and to abide by at least some mandatory elements, why do we need a criminal sanction? The case for that has not been made. We need a criminal sanction because, as far as I can see—and I will have to probe on government Amendment 180 a little more, as this is in effect the first time we have seen these amendments, and I will raise a series of questions about that—it looks as though the Bill has removed all the other existing sanctions, apart from censure, that a local authority

14 Sep 2011 : Column 836

can have when they are applying a scrutiny process. Again, to some of us, who believe in localism, that seems to be strange, verging on bizarre.

Why would one not wish to have as much as possible resolved at the local level? It goes for good regulation and good government that, wherever you possibly can, you resolve issues locally. Therefore, a local authority must be able to retain the powers it currently has to sanction when, after a proper and fair process, a misdemeanour, large or small, has been found. If the existing sanctions are retained, the criminal sanction is not needed.

I would expect rejoicing around the House generally, that we could live without one more criminal Act, particularly an unnecessary one. I will say no more on this for now, but will probe further on government Amendment 180. We do need to ensure that there are meaningful sanctions that operate at a local level fairly, so that, as much as possible, these issues can be dealt with sensibly and with a light touch in the locality. This is why we should restore the sanctions that local authorities currently have, when they have had a proper process against a complaint. I will come back, I fear, at government Amendment 180, on these other points.

Lord Lucas: My Lords, I am a thoroughgoing supporter of Amendment 175 and of the amendments proposed by the noble Earl, Lord Lytton. We will get parish Councils which have great power and influence in their neighbourhood. Politics at that level get very personal and intricate. Unless we have a national set of standards, nobody will know where they are from one of a discussion to the next. Where the acceptable ends and where the unacceptable begins need to be made clear. I therefore have complete sympathy with Amendment 175. What we need beyond that I do not know. At the parish level, I am unconvinced that we need a lot more, because of the referendum process that we are going through in order to get local powers over planning, which will make everything very open and obvious. It may just be that we need the code and that we do not need a lot of mechanism for enforcement. However, I am very happy that discussions should take place, and I am sure that something sensible will emerge. I am delighted that the Government are taking such a supportive attitude to the amendments.

Lord Tope: My Lords, I added my name to the amendments so comprehensively and ably spoken to by the noble Lord, Lord Bichard, a little over three-quarters of an hour ago. The way in which the treatment of the issue has developed has been quite an object lesson in itself. As far as I am aware, it received little or no consideration in the other place. If I recall correctly, the only person in the Second Reading debate to devote their speech substantially to this issue was the noble Lord, Lord Filkin. It was at that point that I became very conscious that, in the midst of our general rejoicing at the proposed demise of the Standards Board for England, we were in grave danger of not thinking about what was going to be left later, which effectively was nothing: everything was going out-the baby and the bathwater.

14 Sep 2011 : Column 837

When we got to Committee, we did not reach this issue until a Thursday evening, after the time when the Committee would normally have adjourned. I remember getting rather tired and emotional about such an important issue being addressed at such an hour. The noble Lord, Lord Beecham, who has known me for the best part of 30 years, is clearly astonished that I could ever get "tired and emotional", but it sometimes happens late on a Thursday night, as it did on that occasion.

Lord Beecham: Only in the *Private Eye* sense.

Lord Tope: It was an extremely serious issue. The Government seemed to be taking the view that this was a Localism Bill and that standards in public life could therefore be dealt in accordance with local diversity. I was pleased to see in the briefing from the National Association of Local Councils, much quoted in this debate, the matter put very succinctly. It stated that,

"there is no local diversity about what is appropriate conduct for Councillors".

There is no one keener on local diversity than me, but the one area where local diversity is particularly inappropriate, and where in the past we have had rather too much of it, is in standards in public life.

I am therefore delighted, although still a little surprised, that, at this very late stage in the Bill's process, that we are having a full and good debate on the subject. The Minister's response has been so much heralded that it is in danger of becoming an anticlimax, because we have all said what we think that he is going to say. If he says it, it will be what we expected; if he does not, we are all in trouble.

I am delighted that we are now, at this late stage, coming to address the real issue, which is not whether we should have had the Standards Board and whether are pleased that it is going-everyone accepts that it is going-it is what replaces it. There seems now, a little late but welcome nevertheless, to be a general acceptance that there needs to be a mandatory code, that it should not be imposed by central government and the Secretary of State, that it should be drawn up, as our amendment states, by "representatives of local government"-I think that it is generally understood what that means-and that it needs to be mandatory both in terms of its existence and of what is in it, although it may be added to.

9.30 pm

We then get to the area for real debate, which is how is that effectively enforced. I do not think that any of us want to recreate in any shape or form the sort of national level bureaucracy that grew up with the Standards Board. As others have said, there are many issues that we can explore belatedly in our discussion. However, we do need to see effective means of local enforcement. One of the elements that we had in the standards regime in recent years, which has been extremely welcome, is the independent element. There may well be exceptions, but certainly in my experience the role of the independent members on the standards committee, often chairing those committees, has been very valuable and welcome-

14 Sep 2011 : Column 838

people such as the noble Lord, Lord Best, for example. We need to look at how we can preserve and enhance that element.

There has to be some sort of an appeals mechanism. It does not have to be an appeal to a national body. I will not try to go over it tonight, but there needs to be some sort of appeal-for natural justice, as has been said, but also to deal with the sort of case referred to by my noble friend Lord Tyler. In some authorities, regardless of political persuasion, someone who is perceived to be awkward or difficult or a minority interest of whatever sort can be persecuted and will not have proper protection within the local authority, even with the independent element. There needs to be some appeal mechanism.

We have set out in the debate the areas for discussion with the Government. It will be a bit of a let-down if the Minister now says that he is not prepared to discuss it at all. I do not think that that will happen. We look forward to some fruitful and positive discussions with the Government to try to find a way through that all sides of the House can support and feel strongly should happen and can be achieved. I really hope that we can come back at Third Reading with a comprehensive package. It may not be what all of us want, but I hope that all of us on all sides can support it at Third Reading. If we can achieve that, the work that we have rather belatedly been doing-I pay tribute particularly to the noble Lords, Lord Bichard and Lord Filkin, in bringing this issue to the fore-will have been very much worth while. I thank them for that.

Lord Wills: I support the amendment. I withdrew my own amendment, which was directed to much the same objectives, because I thought that this one was better. It was more comprehensive and generally much more effective than my own.

As the noble Lord, Lord Bichard, so compellingly set out, the transparent setting of standards for elected representatives plays an important part in securing the accountability that is fundamental for the health of any democracy. With the greater powers conferred on local authorities by the Bill should come greater accountability. Yet as this Bill currently stands, it risks some elected representatives not being accountable in that way. It cannot be acceptable to run the risk of leaving any elected representatives so unaccountable.

Voters expect their elected representatives to meet certain standards. They will expect a code of conduct to be in place for their representatives on every local authority and this amendment will ensure that such expectations are met. I very much hope that the further dialogue about which there has been so much conversation in the debate already will produce an outcome that embeds if not the exact words in these amendments at least something that achieves their effect.

Lord Beecham: My Lords, I feel obliged to pay particular attention to the need to declare interests as I reply on behalf of the Opposition to this debate, so I declare an interest as a member of Newcastle City Council, as a recently appointed member of its

standards committee and as an honorary vice-president of the Local Government Association. I join other colleagues

14 Sep 2011 : Column 839

in congratulating the noble Lord, Lord Bichard, and his co-signatories on bringing forward these amendments. I fear that the tiredness of the noble Lord, Lord Tope, may account for the fact that he omitted to recall that several of us, including the noble Lord, Lord Shipley, myself and others raised the whole agenda of standards boards and committees at earlier stages of the Bill.

Lord Tope: My Lords, in no way would I wish to cast aspersions on the noble Lord and certainly not on my noble friend Lord Shipley. My point was that, if my memory is correct, the noble Lord, Lord Filkin, devoted his entire speech, or pretty well his entire speech, to the issue of standards. He was the only one in the debate to have done so—not surprisingly, as it is such a big Bill.

Lord Beecham: Indeed, and I join the noble Lord in congratulating the noble Lord, Lord Filkin, on what he said on that occasion as well as this. A number of issues have been raised today. I particularly note the observations of the noble Lord, Lord Tyler. I am probably alone in this Chamber in being prepared to shed a tear or two for the standards board. It perhaps started off in a rather cumbersome and bureaucratic way, but it did improve its performance over time. Nevertheless we accept that its day is done, and we have to find a suitable replacement for it.

The noble Lord, Lord Tyler, made perfectly legitimate reference to the problem of trivial complaints designed to gag or in some ways punish or inhibit members. That is a perfectly legitimate concern, which can be met within the framework of the local committees that are proposed in the amendments, particularly when they include the involvement of independent members. That is a crucial issue and one which will need to be discussed with Ministers. Those committees offer an assurance of impartiality which might not otherwise arise in the sometimes highly charged atmosphere—not necessarily party-political atmosphere—that can exist within individual Councils.

AMENDMENTS TO BE MOVED ON THIRD READING

Clause 27

BARONESS HANHAM

Page 38, line 9, at end insert—

“(1A) In discharging its duty under subsection (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

(1B) A relevant authority that is a parish Council—

(a) may comply with subsection (1A) by adopting the code adopted under that subsection by its principal authority, where relevant on the basis that references in that code to its principal authority’s register are to its register, and

(b) may for that purpose assume that its principal authority has complied with section 28(1) and (1A).”

Clause 28

BARONESS HANHAM

Page 39, line 33, leave out subsection (1) and insert—

“(1) A relevant authority must secure that a code adopted by it under section 27(1A) (a “code of conduct”) is, when viewed as a whole, consistent with the following principles—

(a) selflessness;

(b) integrity;

(c) objectivity;

(d) accountability;

(e) openness;

(f) honesty;

(g) leadership.

(1A) A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—

(a) pecuniary interests, and

(b) interests other than pecuniary interests.

(1B) Sections 29 to 34 do not limit what may be included in a relevant authority's code of conduct, but nothing in a relevant authority's code of conduct prejudices the operation of those sections.

(1C) A failure to comply with a relevant authority's code of conduct is not be dealt with otherwise than in accordance with arrangements made under subsection (3); in particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with the code."

Page 39, line 37, at end insert "or"

Page 39, line 38, leave out from second "conduct" to end of line 39

Page 39, line 40, leave out subsection (3) and insert—

"(3) A relevant authority other than a parish Council must have in place—

(a) arrangements under which allegations can be investigated, and

(b) arrangements under which decisions on allegations can be made.

(3A) Arrangements put in place under subsection (3)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

(a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish Council if that person's behaviour is the subject of an allegation and the authority is the parish Council's principal authority.

(3B) For the purposes of subsection (3A)—

(a) a person is not independent if the person is—

(i) a member, co-opted member or officer of the authority,

(ii) a member, co-opted member or officer of a parish Council of which the authority is the principal authority, or

(iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);

(b) a person may not be appointed under the provision required by subsection (3A) if at any time during the 5 years ending with the appointment the person was—

(i) a member, co-opted member or officer of the authority, or

(ii) a member, co-opted member or officer of a parish Council of which the authority is the principal authority;

(c) a person may not be appointed under the provision required by subsection (3A) unless—

(i) the vacancy for an independent person has been advertised in such manner as the authority considers is likely to bring it to the attention of the public,

(ii) the person has submitted an application to fill the vacancy to the authority, and

(iii) the person's appointment has been approved by a majority of the members of the authority;

(d) a person appointed under the provision required by subsection (3A) does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(3C) In subsections (3) and (3A) "allegation", in relation to a relevant authority, means a written allegation—

(a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or

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

(3D) For the purposes of subsection (3B) a person ("R") is a relative of another person if R is—

(a) the other person's spouse or civil partner,

(b) living with the other person as husband and wife or as if they were civil partners,

(c) a grandparent of the other person,

(d) a lineal descendant of a grandparent of the other person,

(e) a parent, sibling or child of a person within paragraph (a) or (b),

(f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or

(g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.”

Page 40, line 1, leave out “this section)” and insert “arrangements put in place under subsection (3))”

Page 40, line 6, leave out “withdrawal” and insert “replacement”

Page 40, line 10, leave out “withdrawing a code of conduct under this section” and insert “replacing a code of conduct”