



Tyne & Wear Integrated Transport Authority - Standards & Audit Committee Special Meeting

**Meeting to be held: Committee Room, Civic Centre, Newcastle upon Tyne, NE99 2 BN
on Friday 20 April 2012 at 2.00 pm**

**Membership: P Wood, Mr Atkinson, Blackburn, Mr Scrimshaw, Mr Clark, Ms Green,
Hall, McElroy and Green**

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1. Apologies for Absence

**2. Declarations of Interest of Members or Officers in any matter to be
discussed at the meeting**

(If any Member has a personal or prejudicial interest, please complete the appropriate form and hand this to the Democratic Services Officer before leaving the meeting).

Members are reminded to verbally declare their interest and the nature of it and, if prejudicial, leave where appropriate at the point of the meeting when the item is to be discussed.

3. The Amended Standards Regime - Proposed Arrangements

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Tyne and Wear Integrated Transport Authority

STANDARDS AND AUDIT COMMITTEE

DATE:	20 April 2012
REPORT TITLE:	The Amended Standards Regime – Proposed Arrangements
REPORT OF:	The Legal Adviser and Monitoring Officer
DISTRICT IMPLICATIONS:	All

1. **Purpose of Report**

- 1.1 To consider what new local arrangements for dealing with allegations of breach of the code of conduct for members should be put in place from 1 July 2012.

2. **Summary**

- 2.1 This report contains detailed proposals for the new local arrangements for dealing with allegations of a breach of the code of conduct for members.

3. **Recommendations**

- 3.1 **Standards and Audit Committee** is asked to consider the proposals set out in paragraphs 5.4, 6.5, 7.8, 8.10, 9.3, 10.3 and 12.6 of this report and to advise the Authority of the extent to which they agree them or would recommend alternatives.

4. **Introduction and Background**

- 4.1 The Committee received a report on the standards provisions in the Localism Act 2011 (“the Act”) at its meeting in February. This report identifies the issues for the Authority to consider and makes proposals on how it might best implement a new regime.

As the Committee is aware, Standards for England ceased to exist on 31 March 2012. However, the Government have indicated that other parts of the existing standards regime will remain in place until 1 July 2012 when it is intended the new legislative provisions will come into force.

4.2 The new system has some mandatory elements, but also much more scope for local discretion on what arrangements are put in place.

4.3 There are detailed issues to be considered, and decisions to be made, in the design of a new standards system for the Authority from 1 July.

As the Committee is aware, the City Council (as lead authority for the ITA) has been taking steps to consider its own arrangements under the new regime.

The suggested arrangements set out in this report are therefore based on the City Council's own proposed arrangements.

5. A New Code of Conduct for Members

5.1 This is a key area for decision: the Authority must write its own code of conduct, subject only to it being consistent with the seven principles (ie Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty and Leadership), and containing some provision about the registration and disclosure of pecuniary and non-pecuniary interests.

5.2 Until it is known how Disclosable Pecuniary Interests ("DPIs") are to be defined by the Government, it is hard to know what remaining interests might be included in a new code.

We understand the Local Government Association ("LGA") are proposing to issue one or two suggested model codes for member authorities to use but so far these have not been made available.

5.3 Meanwhile the Authority might sensibly reach some interim view on what should be in its new code, so that it can compare its aspirations with any model emerging from the LGA in due course.

Our existing code of conduct (essentially the statutory model code) is a sensible starting point for deciding what general provisions the Authority might want to see in its new code.

Appendix 1 analyses the existing provisions and considers possible additional provisions. It also makes some recommendations about personal interests (which to some extent depend upon the statutory definition of DPIs).

Appendix 2 reflects what a new code of conduct would look like if Members agree the suggestions in Appendix 1. Importantly, this requires further reflection about what interests (other than DPIs) should sensibly be registered in future, which in turn depends upon how DPIs are defined by Government. Meanwhile members' views on the issue would be welcome.

5.4 Issue 1 – The Authority has to decide what it will include in its Code of Conduct

Proposal 1:

(a) That the draft Code of Conduct at Appendix 2 fairly represents all the provisions which the Authority would wish to see in its code and that that draft should be recommended for adoption subject to consideration of (a) the Government regulations on DPs (b) the final version of the LGA model code.

(b) That once that further information is to hand, the Monitoring Officer, after consultation with the Chairs of the Authority and of Standards and Audit Committee, suitably amend the draft code at Appendix 2 before referral to the Authority for adoption;

(c) Members give particular consideration at this stage to the extent to which interests other than DPs (however they are defined) should in future be entered on the Register.

6. Standards Committee

6.1 Whilst there will be no legal requirement for a Standards Committee, there will still be a need for a group of members to consider complaints, decide if there has been a breach of the code and, if so, what sanction to impose.

It therefore seems convenient to still have a Standards Committee, and one with decision-making powers to avoid matters having to be referred to the Authority.

This will be a normal committee of the Authority, without the unique features conferred by the previous legislation. As a result:

(a) The composition of any new Standards Committee will be governed by the political balance rules (unless the Authority votes otherwise with no member voting against).

(b) The current co-opted independent members will cease to hold office. The new statutory Independent Person(s) must be consulted at various stages and may be invited to attend meetings of the Standards Committee. However, they cannot in law be co-opted onto the Committee.

(c) Despite the new statutory Independent Person(s), it will still technically be possible for the Authority to co-opt other independent members onto its Standards Committee. However, unless the Committee were to be purely advisory, then any such co-optees would have no voting rights.

Having independent members on the Committee (albeit non-voting) would allow existing independent members to continue and thus give the Committee the benefit of their valuable local experience. On the other hand, it could be argued that it is no longer necessary to have other independent members on the

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Committee given the new statutory role of the Independent Person (who, of course, might have recent experience of being an independent member on the standards committee of a neighbouring local authority). There might also be concern about potential confusion over their respective roles, and influence on the Committee.

In light of these considerations, members need to decide whether they wish to continue to have independent co-opted members sitting on the new Standards Committee (in addition to the one or more statutory Independent Persons who will not sit on the Committee). If members are minded to continue with this arrangement, then they need to decide how many such independent co-opted members would be appropriate (bearing in mind there are four such members on the current Standards Committee)

- 6.2 It is suggested any new Standards Committee might sensibly comprise 5 elected members of the Authority together with such number of non-voting independent co-opted members (if any) as might be felt appropriate by members.

In terms of voting membership, this would be the same as the existing Committee. This seems a reasonable size, particularly if the arrangements for dealing with complaints proposed in section 8 are agreed, as they should not require the creation of any regular sub-committees. A committee of 5 voting members should still be large enough to reasonably ensure a quorum of two (or three) being achieved after allowing for natural absences and any conflicts of interest in particular cases.

The political balance on current figures would be 4 -1.

It is difficult in the absence of co-opted members with voting rights to avoid one political party having a natural majority on the Committee. Even if the Authority were, without any dissent, to waive the political balance rules and create a committee of say 6 members with political equality, the chair's second and casting vote would still prevail following a split vote.

Voting co-optees are not possible if the Committee is to be decision-making. It is considered it can only sensibly operate on this basis.

It is also suggested that one of the independent co-optees should be the Chair of the Committee, despite not having voting rights. It may be felt that this would encourage continued political neutrality of the Committee and replicate its existing culture as far as is possible under the new legislation.

- 6.3 Appendix 3 lists suggested delegated powers for the new Standards Committee based on the proposals in this report.
- 6.4 The current Committee is, of course, the Authority's Standards and Audit Committee. Therefore the Authority will need to decide how it wishes to deal with the audit functions of the current Committee in future.

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As explained above, a standards committee can only sensibly operate if it is a decision making body and thus any independent members must be non-voting.

However, so far as audit issues are concerned, it is important that the independent members are voting co-optees and thus the audit committee needs to be an advisory committee.

A sensible solution therefore is, in future, to constitute two separate committees, one for standards and another for audit, but with the same membership and with the two committees meeting one after the other. This would mean that when sitting on the standards committee the independent members would be non-voting but, when sitting on the audit committee, they would be voting co-optees.

6.5 Issue 2 – The Authority must decide whether to set up a Standards Committee, and how it is to be composed.

Proposal 2 –

(a) That the Authority establish a Standards Committee comprising 5 elected members of the Authority, appointed proportionally;

(b) That consideration be given as to (i) whether any independent persons should continue to be co-opted onto the Committee (albeit without any voting rights) and, if so, (b) what would be an appropriate number of such independent co-optees to recommend to the Authority;

(c) That the creation of two separate committees, as described in 6.4, be agreed;

(d) That the Standards Committee be given the delegated powers set out in Appendix 3 and the new Audit Committee's delegations be amended accordingly.

7. Independent Persons

7.1 The law requires the Authority to appoint at least one Independent Person, to perform the following functions:

- a. Their views **must** be sought and taken into account by the Authority before it makes its decision on an allegation which it has decided to investigate;
- b. Their views **may** be sought by the Authority in relation to an allegation in other circumstances (e.g. before a decision to investigate is taken, and/or in relation to issues other than the final decision on an allegation);
- c. Their views **may** be sought by a Authority member whose behaviour is the subject of an alleged breach of the code of conduct.

7.2 A person does not qualify as "independent" if they are (or at any time in the last 5 years have been) a member, co-opted member or officer of the Authority, or if

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they are a relative or close friend of such a member, co-opted member or officer. “Co-opted” member is defined so as to include current independent members of Standards Committee.

Notwithstanding this definition in the Act, the Government has recently announced that Ministers are now minded under transitional provisions to allow councils to appoint a person as an Independent Person who, although not a member or chairman of a standards committee at the time of appointment (or thereafter), has held such a post within the last five years.

This concession would apply for the first year of the new arrangements (i.e. until 30 June 2013), although any person appointed under the transitional provisions would be able to continue to hold office after the transitional period, for whatever term the council saw fit.

At the time of writing this report, the transitional provisions referred to have not been published.

For this purpose, “relative” comprises –

- (a) a spouse or civil partner;
- (b) any person with whom the candidate is living as if they are a spouse or civil partner;
- (c) a grandparent;
- (d) any person who is a lineal descendent of a grandparent;
- (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) any spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

7.3 **Number of Independent Persons?**

Whilst the legal minimum is one, it is suggested that it might be sensible to appoint two, in order to deal with situations where one Independent Person is ill, indisposed, away on holiday, or indeed has a conflict of interest in a matter on which they have to be consulted. Two appointees would also allow some degree of mutual support and dialogue, as well as balance, which might be seen as helpful bearing in mind their independent status and that they will not be members of the Standards Committee

Consideration has been given to the option of only having one Independent Person but with another one or two retained as reserves to cover for any unavoidable absences by the former. On balance however it is felt little would be gained by this, given that any reserves would still need to be kept fully briefed on conduct issues and there might be difficulties in determining exactly when a

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reserve should be called on in place of the original appointee.

7.4 **Period of appointment?**

The legislation offers no guidance. A maximum period of five years without further advertisement is suggested (but subject to ratification by the Authority after two years) to strike a balance between acquiring proficiency and potential perceived diminution of independence. Despite the relatively brief formal description of the role, Independent Persons will require induction and ongoing support from the Authority, as well as the commitment to sufficiently understand the Authority's business, without becoming allied to its processes or members.

7.5 **Description of Role?**

It is suggested the Authority adopt a formal description of the Independent Person role. This will help in recruitment, and assist the public, Authority members, and the Independent Persons themselves. A draft role description is attached as **Appendix 4** to this report.

7.6 **Remuneration?**

As the Independent Person is not a member of the authority or its committees, remuneration does not come within the members' allowances scheme, and can therefore be fixed without reference to the Independent Remuneration Panel.

Compared to the current Chair of Standards and Audit Committee, the role is likely to be much less onerous. If the role proposed in Appendix 4 is agreed, it is considered that an assessment of the role should be undertaken in order to set suitable remuneration.

7.7 **Recruitment**

The Monitoring Officers for the five Tyne and Wear districts and Northumberland have agreed that it would be sensible to undertake a joint recruitment exercise to save on advertisement costs. If possible uniform role description, level of remuneration and length of term would facilitate that process. Officers will continue to liaise to try and achieve this.

The Monitoring Officer is requesting that this exercise will be extended to include the ITA.

7.8 **Issue 3 – Number, Role and Remuneration of Independent Persons?**

Proposal 3 –

(a) That there be two Independent Persons appointed and that the Monitoring Officer proceed to advertise those vacancies on the basis of the role description at Appendix 4, if possible as part of a joint exercise with other neighbouring authorities;

(b) That the appointments be for two years but with provision to extend

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for a further two years without re-advertisement;

(c) That a Panel comprising the Chair and three other members of the current Standards and Audit Committee be set up to short-list and interview candidates, and to make a recommendation to the Authority for appointment;

(d) That the Monitoring Officer, in consultation with the Chairs of the Authority and of Standards and Audit Committee, and with the advice of the Head of Operational HR at the City Council, be authorised to set the initial allowances and expenses for the Independent Persons and this function subsequently be delegated to the Standards Committee.

8. Dealing with Misconduct Complaints

8.1 Arrangements

The Authority must adopt “arrangements” to deal with complaints of breach of the code by Authority members. Complaints can only be dealt with in accordance with such arrangements. Thus, they must set out in some detail the process for dealing with complaints and the actions which may be taken against a member found to be in breach.

The Act repeals the current need for separate Assessment, Review and Hearings Sub-Committees. It enables the Authority to establish its own process, which can include delegation of decisions on complaints. Indeed, as the legislation no longer gives the Standards Committee or Monitoring Officer any special powers to deal with complaints, it is necessary for the Authority to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

8.2 Decision whether to investigate a complaint

It seems sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation subject to him (a) consulting the Independent Person where he considers it appropriate and (b) referring particular complaints to the Standards Committee where he feels that it would be inadvisable for him to take a decision e.g. where he has previously advised the member on the matter or the complaint is particularly sensitive.

These arrangements would also give the Monitoring Officer opportunity to try to resolve a complaint informally, before taking a decision on whether it merits formal investigation.

If this function is delegated to the Monitoring Officer, he should be accountable for its discharge. Thus, it would be appropriate that he make a regular (e.g. a half yearly) report to Standards Committee on the number and nature of complaints received, advise on the progress of any investigations and draw to the Committee’s attention to areas where training or other action might avoid

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further complaints.

In practice, Standards for England guidance on initial assessment of complaints has provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. Standards and Audit Committee agreed a set of Assessment Criteria (based on that guidance) in May 2008.

It is suggested the Monitoring Officer in exercising this initial assessment function should apply similar criteria to those agreed by Standards Committee in 2008. A suitably revised set of criteria are at **Appendix 5**.

8.3 **A “No Breach of Code” finding on investigation**

Where a formal investigation finds no evidence of failure to comply with the Code, the current requirement is that this is reported to a Sub-Committee of the Standards Committee, which formally decides whether to take no further action.

In future, it seems reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate.

Before exercising this delegated power, the Monitoring Officer must consult the Independent Person(s) and take their views into account. In addition, it is proposed the Monitoring Officer should provide a summary report of each such investigation to Standards Committee for information.

8.4 **A “Breach of Code” finding on investigation**

Where a formal investigation finds evidence of failure to comply with the Code, there may still be an opportunity for local resolution, avoiding the necessity of a local hearing. An investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied: for instance, by recognition of fault and an apology and/or other remedial action.

However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution not only after consultation with the Independent Person(s) but also with the Chair of the Standards Committee. In addition this would be conditional on the complainant being satisfied with the outcome. Again it is proposed that a summary report on any such resolved cases should be reported for information to the Standards Committee.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code, it would be necessary for the Standards Committee to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Committee can decide if the member did fail to comply with the Code and what action, if any, is appropriate as a result.

8.5 Action following a hearing finding a failure to comply with Code

The Act does not give the Authority or its Standards Committee any powers to impose sanctions. So, where a failure to comply with the Code of Conduct is found, the actions which the Authority can take are limited to its common law powers. Case law from before 2000, and a recent leading Counsel's opinion obtained by the Association of County Secretaries and Solicitors ("ACSeS") suggests the sanctions available include the following:

- Standards Committee issuing a formal censure;
- The Authority issuing a formal censure;
- Referral of the Standards Committee findings to the Authority, for information;
- Publication of the Standards Committee's findings by such means as it thinks fit;
- The Authority removing the member from any or all Committees or Sub-Committees for a specified period (subject to the approval of the member's Group if applicable);
- The Authority removing the member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated by the Authority;
- The Authority offering training to the member.

8.6 Appeals

Currently, there are two statutory rights of appeal in the process: (i) by a complainant aggrieved at a decision to take no action on a complaint, who can appeal to a sub-committee of Standards Committee (ii) by a member found guilty of a breach, who can appeal against that finding or any sanction to the First Tier Tribunal for Local Government Standards (which is about to be abolished).

There is no requirement in future to have any appeals mechanism against such decisions. They would be open to judicial review by the High Court if they were patently unreasonable, or taken improperly, or if the Authority sought to impose a sanction which it had no power to impose. There may also be scope to complain to the Local Ombudsman. These remedies, coupled with the internal arrangements referred to above, in my view satisfy any requirements of Article 6 of the European Convention on Human Rights (right to a fair trial).

8.7 The logical scope for any appeals would be against any decision by the Monitoring Officer to either (a) not investigate a complaint or (b) not refer to Standards Committee a complaint which has been investigated with a finding of no failure to comply with the Code.

Provision could be made to allow any complainant aggrieved by either of these decisions to request the Monitoring Officer to reconsider them, with the effect that he would then be required to consult the views of both the Independent Person(s) and the Chair of the Standards Committee before deciding whether to (a) uphold his original decision or (b) investigate the complaint or (as the case

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may be) refer the investigation finding to Standards Committee for it to decide if a hearing is nevertheless appropriate.

In addition, provision could also be made to allow an appeal by a councillor against a finding of a failure to comply with the Code. Further consideration needs to be given about the mechanism for this.

8.8 **Written Procedures**

Once members agree these suggested arrangements, or any variation thereof, it is proposed that the Monitoring Officer will prepare a written version of the Arrangements for publication, which will include a standard Form of Complaint and procedures for the investigation of complaints and the local determination of them.

These will be based on our existing procedures with various modifications to try and simplify the process whilst retaining all essential elements of fairness and transparency.

It is proposed that the new Standards Committee be given express delegated power by the Authority to approve such documentation and amend it from time to time as it thinks fit.

8.9 **Confidentiality**

In future normal access to information and public access to meeting rules will apply to Standards Committee. The previous special rules which automatically gave confidential status to reports on the assessment and determination of complaints are being repealed. It will thus be for the new Standards Committee to decide on a case by case basis whether reports and committee proceedings should be public, given the normal criteria for deciding this, particularly the public interest test.

8.10 **Issue 4 – The Authority has to decide what ‘arrangements’ it will adopt for dealing with standards complaints and for taking action where a member is found to have failed to comply with the Code of Conduct.**

Proposal 4 –

(a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;

(b) That the Monitoring Officer be given delegated power, after consultation with at least one of the Independent Person(s), to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report regularly to Standards Committee on the discharge of this function;

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(c) That in deciding whether a complaint should be investigated the Monitoring Officer take into account the criteria at Appendix 5 and that the Standards Committee be given delegated power to amend those criteria from time to time as it thinks appropriate;

(d) Where an investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter (unless he considers it appropriate after consulting the Independent Person(s) to refer the findings to the Standards Committee to decide if a hearing is nevertheless called for), providing a copy of the report and findings of the investigation to the complainant and to the member concerned, as well as to the Independent Person(s), and reporting the findings to the Standards Committee for information;

(e) Where an investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person and the Chair of the Standards Committee be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to the Standards Committee for local hearing;

(f) That the Authority delegate to the Standards Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –

- Issuing a formal censure by the Committee;
- Recommending to the Authority the issue of a formal censure by the Authority;
- Referral of its findings to the Authority, for information;
- Publication of its findings by such means as the Committee thinks fit;
- Recommending to the Authority that the member be removed from any or all Committees or Sub-Committees (subject to the approval of the member's Group if applicable);
- Recommending to the Authority that the member be removed from the office of Chair/Vice Chair of any or all Committees or Sub-Committees;
- Recommending to the Authority that the member be removed from all outside appointments to which s/he has been appointed or nominated by the Authority;
- Instructing the Monitoring Officer to offer training to the member.

(g) That there be the following provisions for appeal:

- Any complainant aggrieved by a decision of the Monitoring Officer (a) not to investigate a complaint or (b) not to refer to Standards

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Committee a complaint which has been investigated with a finding of no failure to comply with the Code, may request the Monitoring Officer to reconsider that decision. The Monitoring Officer would then be required to seek the views of both the Independent Person(s) and the Chair of the Standards Committee before deciding whether to (a) uphold his original decision or (b) investigate the complaint or (as the case may be) refer the investigation finding to Standards Committee for it to decide if a hearing is nevertheless appropriate.

- **An appeal by a councillor against a finding of a failure to comply with the Code, under procedures to be considered further.**

(h) That the Monitoring Officer in due course prepare a written version of the agreed Arrangements for publication, to include a template Form of Complaint and procedures to be followed for any investigation or local determination of a complaint and that the new Standards Committee be given delegated power to adopt and amend those procedures from time to time as it thinks appropriate.

9. **The Register of Members Interests**

- 9.1 As already indicated, the Monitoring Officer must keep a Register which must include any DPIs, as well as any other interests which the Authority decides should be registered under its code of conduct.

We do not yet know what DPIs will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirements, but in fact the Act extends the requirement for registration of DPIs to cover not just a member's own interests, but also those of the his/her spouse or civil partner, or someone living with him/her in a similar capacity.

The Register must be available for public inspection and on the Authority's website.

- 9.2 Failure to register all DPIs within 28 days of becoming a member is a criminal offence, but will not prevent the member from still acting as a member.

The proposed Code of Conduct at Appendix 2 provides for other interests to be registered. Failure to do so would not be a criminal offence, but merely a breach of the Code.

Whilst there is no continuing requirement legally on a member to keep the register up to date, except on re-election or re-appointment, the draft Code at Appendix 2 makes provision for this.

9.3 **Issue 5 – Preparation of the Registers**

Proposal 5 –

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(a) That the Monitoring Officer prepare and maintain a new register of members interests to comply with the Act and the Authority's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;

(b) That the Monitoring Officer ensure that all members are informed of their duty to register interests;

10. **Disclosure of Interests and Withdrawal from meetings**

10.1 As explained earlier, if a member has already registered a DPI, or sent off a request to the Monitoring Officer to register it (a 'pending notification'), s/he is not required by the Act to declare it at any meeting where that DPI becomes relevant (although the member is precluded from taking part in the discussion or vote).

It is only where the DPI is not registered, or subject to a pending notification, that a formal declaration must be made at the meeting.

The Authority could however (through its Code) require all interests (i.e. both DPIs and other interests) to be declared, even if registered, so that there is a public record of the interest in relation to a specific item of business.

Subject to seeing the DPI regulations, it is suggested that such provision would be appropriate and the proposed Code at Appendix 2 has been drafted accordingly.

10.2 If a member has a DPI in any item of business, s/he may not take part in any discussion of the matter at the meeting, or vote on it (unless a dispensation has been obtained). However the Act does not require the member to leave the meeting.

A requirement to withdraw from the meeting room could be covered by Standing Orders, with a specific requirement in the Code that the member must comply with that standing order.

Members may feel that it would be appropriate to voluntarily adopt such a requirement. The draft Code at Appendix 2 makes provision for this.

10.3 **Issue 6 – What Standing Order should the Authority adopt in respect of withdrawal from meetings for interests?**

Proposal 6 – The Authority be recommended to adopt a Standing Order which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which s/he has a DPI, except where permitted to remain as a result of a dispensation.

11. Sensitive Interests

11.1 The Act effectively re-enacts existing provisions on Sensitive Interests.

Hence, where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which s/he is required to disclose under the Code) either at a meeting or on the Register of Members' Interests would lead to the member or a person connected with him/her being subject to violence or intimidation, s/he may request the Monitoring Officer to agree that the interest is a "sensitive interest".

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the Register.

12. Dispensations

12.1 The provisions on dispensations are significantly changed by the Act.

12.2 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on the grounds that either (a) at least half the members of a decision-making body have prejudicial interests or (b) so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter. In practice it is rare for either ground to apply.

12.3 In future, a dispensation can be granted in the following circumstances –

(i) So many members of the decision-making body have DPIS in a matter that it would "impede the transaction of the business". Effectively this means the decision-making body would be inquorate as a result;

(ii) Without a dispensation, no member of the Cabinet would be able to participate on the matter;

(iii) Representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;

(iv) The Authority considers that a dispensation is in the interests of persons living in its area;

(v) The Authority considers that it is otherwise appropriate to grant a dispensation.

Clearly, the ground set out in (ii) above does not apply to the Authority.

12.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

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- 12.5 Whereas currently dispensations can only be granted by Standards Committee, the new Act gives discretion for this power to be delegated to Standards Committee or to the Monitoring Officer.

Ground (i) above is fairly objective, so it may be appropriate to delegate dispensations on this ground to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”.

The other Grounds are much more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

12.6 Issue 7 – What arrangements would be appropriate for granting dispensations?

Proposal 7 – That the Authority delegate the power to grant dispensations –

(a) on the Ground set out in paragraph 12.3(i) of this report to the Monitoring Officer with an appeal to Standards Committee, and

(b) on Grounds 12.3(iii), (iv) and (v) to the Standards Committee, after consultation with the Independent Person.

13. Next Steps

- 13.1 It is intended that this report go to the Authority at its AGM on 31 May 2012, with the Committee’s recommendations.

However, the recommendations on the code of conduct will be subject to consideration of (a) Government regulations on DPs and (b) any model code of conduct from the LGA. Unfortunately, the exact timing of both is unknown.

If the Regulations and code referred to above are not available prior to the Authority’s May meeting, it might be prudent to recommend that the Authority continue with its existing code of conduct from 1 July until at least the end of July when the Authority next meets (26 July).

In the meantime, steps will be taken to appoint the Independent Person(s) in anticipation of the new arrangements and arrange for their induction and training.

14.1 Background Papers

None

15.1 Contact Officers

Stuart Ovens, Head of Corporate Law, ext 27122
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Appendices

- 1. Analysis of potential provisions for new code of conduct**
- 2. A 1st Draft of a proposed new Code of Conduct**
- 3. Proposed delegated powers to new Standards Committee**
- 4. Proposed Role Description for Independent Person**
- 5. Proposed Assessment Criteria**

Analysis of potential provisions for new code of conduct

1. Which of the general conduct provisions in the existing statutory model code might be sensibly replicated in our new code of conduct?

Existing code	Options	Recommendation
You must treat others with respect.	Include in code or not?	Include: this is a fundamental requirement, and often comes up in practice.
You must not do anything which causes the Authority to breach equality legislation.	Include in code or not?	Do not include: covered by treating others with respect.
You must not bully any person.	Include in code, or not, or combine with item below.	Include as important provision.
You must not intimidate (or attempt to intimidate) anyone involved in a complaint.	Include in code, or not, or combine with above.	Include as sensible safeguard.
You must not do anything which is likely to compromise officer impartiality.	Include in code or not?	Include: this is an essential safeguard.
You must not disclose confidential information (subject to exceptions).	Include in code or not?	Include: retain existing exceptions.
You must not prevent another person gaining access to information to which they are	Include in code as existing, or broaden to include attempting to prevent, or do not include at all.	Include in code, but broaden to prohibit members attempting to prevent legitimate access to

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entitled.		information.
You must not bring your office or authority into disrepute.	Include in code or not?	Include: this is a fundamental requirement, and often comes up in practice.
You must not use or attempt to use your position improperly to secure an advantage or disadvantage.	Include in code or not?	Include: this is an essential safeguard.
You must act in accordance with the Authority's reasonable requirements when using its resources.	Include in code or not?	Include: rarely arises in practice, but an important statement of principle.
You must ensure the Authority's resources are not used improperly for political purposes.	Include in code or not?	Include. An important statement of principle
You must have regard to the code of practice on local authority publicity.	Include in code or not?	Do not include: this is a corporate rather than an individual responsibility.
You must have regard to the advice of the Chief Finance Officer and the Monitoring Officer.	Include in code or not?	Do not include. It would be virtually impossible to prove breach of this provision.
You must give reasons for decisions in accordance with statutory and Authority requirements.	Include in code or not?	Do not include: this is a corporate rather than an individual responsibility.

2. Is there a case for including in the new code of conduct any other general provisions which are not in the current code? Suggestions are discussed in the following table:

Issue	Options	Recommendation
A general	The Authority could	Do not include: too difficult

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requirement to observe the principles of selflessness, integrity etc.	choose to include such a provision, and the code is supposed to reflect these principles. However, any such provision would inevitably be vague.	to apply in practice.
A specific instruction to act in accordance with the Authority's duty to promote and maintain high standards of conduct.	This is included in a draft code produced by ACSeS (Association of Council Secretaries and Solicitors), but this may also be too vague.	Do not include: too difficult to apply in practice.
Avoiding predetermination and bias.	This is in the ACSeS draft code, but has never been a code of conduct issue in the past.	Do not include: address as a matter of lawfulness rather than an issue of personal conduct.

3. Personal interests. Our code of conduct can include whatever provision the Authority considers appropriate in respect of the registration and disclosure of pecuniary interests and other (i.e. non-pecuniary) interests. Again, the issues are covered in the table below:

Issue	Options	Recommendation
Requirement to register DPs	This is a legal requirement on appointment, but there is no legal obligation to keep the register up to date.	Include a requirement to keep the register up to date. Breach of this would not be a criminal offence. But including such a provision would make the register a much more useful document.
Requirement to register other pecuniary interests.	What these may be depends on the definition of "DPs".	Do not include any provision in the code of conduct, unless this appears desirable in the light of the definition of DPs
Requirement to register non-pecuniary interests.	Broad options are either not require registration of any interests beyond DPs or to keep similar as existing code. The key issues are openness and accountability i.e. should people be able to	Paragraph [12] of Appendix 2 contains a proposed list of registerable non-pecuniary interests similar to those in the current code; this will in any event need to be reconsidered when the

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	know what personal interests members have which might influence them.	definition of DPIs is produced.
A requirement to declare personal interests at meetings, even though they are registered.	This is not a legal requirement. However, accountability and openness again indicate it to be desirable.	Include a provision in the code requiring declaration.
A requirement to observe a standing order on members with a DPI leaving the room during debate on the item in question.	It is optional to make such a standing order. Since members are already debarred from speaking or voting, it is suggested that public perception may be better if the member also leaves the room.	Make such a standing order, and include a provision in the code of conduct requiring members to comply with it. Otherwise, there is no sanction.
A requirement to refrain from speaking / voting / remaining in the room in other circumstances (i.e. the member has a personal interest which is not a DPI)	Currently, members with personal interests which are not prejudicial can remain in the room, and may speak and vote. Thus there seems no reason to introduce this sort of requirement now.	Do not include any such provision in the code.

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A 1st Draft Code of Conduct for Members of Tyne and Wear Integrated Transport Authority

The Tyne and Wear Integrated Transport Authority (“the Authority”) has adopted the following code which has effect from 1 July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Authority when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Authority (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Authority.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Authority but is not one of its elected members

The code is intended to be consistent with the following seven principles, and should be read in the light of those principles, namely that Authority Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

General Conduct

1. You must treat others with respect.
2. You must not bully any person and you must not intimidate or attempt to intimidate any person who is involved in any complaint about any alleged breach of this code of conduct.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Authority.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Authority which seeks to regulate the conduct of its elected members or co-opted members and which the Authority has specifically declared should fall within the provisions of this code of conduct and which is listed in the annex to this Code.
7. When using or authorising the use by others of the resources of the Authority, you must act in accordance with the Authority’s reasonable requirements and must ensure they are not used improperly for political purposes (including party political purposes).

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8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - (a) You have the consent of a person authorised to give it; or
 - (b) You are required by law to do so; or
 - (c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - (d) The disclosure is reasonable, in the public interest, made in good faith, and made in compliance with the reasonable requirements of the Authority.

Registration of Interests

10. Subject to paragraph 12, you must register in the Authority's Register of Members Interests information about your personal interests. In this code of conduct 'your personal interests' means:
 - (a) any 'Disclosable Pecuniary Interest' (as defined by any statutory provision in force from time to time) which you know about and which is held by
 - you, or
 - your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners;

and
 - (b) any other interests held by you as set out in paragraph 11,

You must register information about your personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Authority; and
 - any change taking place in your personal interests.
11. The following are personal interests for the purposes of paragraph 10(b):
 - (a) Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Authority;
 - (b) Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);
 - (c) Any business which you are involved in carrying on;
 - (d) Any partnership of which you are a partner;
 - (e) Any employer for whom you work;

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- (f) Any contract for goods, services or works between the Authority and you or any firm of which you are a partner or any company of which you are a remunerated director or in which you hold shares with a value exceeding £25,000 or 1% of its issued share capital;
 - (g) Any person (other than the Authority) who has made a payment to you in connection with you carrying out your duties as an Authority Member;
 - (h) Any land in the Authority's area in which you have a beneficial interest or a licence to occupy;
 - (i) Any land owned by the Authority of which you are the tenant or licensee;
 - (j) Any person from whom you have received the offer of a gift or hospitality with an estimated value of more than £25 (whether or not you accept the offer) which is attributable to your position as an elected or co-opted member of the Authority.
12. Where you think that disclosure of the details of any of your personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, you may inform the Monitoring Officer; and if the Monitoring Officer agrees, a note will be made in the Register to the effect that you have a personal interest, details of which are withheld under Section 32 of the Localism Act 2011.

Declaration of Interests

13. Where you attend a meeting of the Authority, or one of its Committees or Sub-Committees, and you are, or ought reasonably to be, aware that any of your personal interests are relevant to an item of business which is being considered, then unless the interest is one which has been noted under paragraph 12, you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
14. Where you attend a meeting of the Authority, or one of its Committees or Sub-Committees, and you are, or ought reasonably to be, aware that a decision in relation to any item of business which is to be transacted might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a person described in paragraph 15 to a greater extent than most inhabitants of the area affected by the decision, then you must disclose to that meeting the existence and nature of that interest at the start of that item of business, or when the interest becomes apparent, if later.
15. The persons referred to in paragraph 14 are:
- (a) a member of your family;
 - (b) any person with whom you have a close association;
 - (c) in relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.
16. You must comply with any standing order adopted by the Authority which requires Members to leave the room during any meeting at which a matter in which they have a Disclosable Pecuniary Interest is being discussed.

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Annex to Code of Conduct

The Authority has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Authority has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

[Insert here names of any relevant Protocols]

Proposed Delegated Powers to new Standards Committee

1. Promoting and maintaining high standards of conduct by councillors and co-opted members;
2. Assisting the councillors and co-opted members to observe the Members' Code of Conduct;
3. Advising the Authority on the adoption or revision of the Members' Code of Conduct;
4. Monitoring the operation of the Members' Code of Conduct;
5. Advising, training or arranging to train councillors and co-opted members on matters relating to the Members' Code of Conduct;
6. Granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct so far as not delegated to the Monitoring Officer;
7. Dealing with written allegations that a councillor or co-opted member (or former councillor or co-opted member) of the Authority has failed, or may have failed, to comply with the Members' Code of Conduct.
8. Dealing with complaints that a councillor or co-opted member of the Authority has failed, or may have failed, to comply with one of the Authority's local protocols.

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Role Description for Independent Persons appointed by Tyne and Wear Integrated Transport Authority for Standards of Conduct Issues affecting Authority Members

1. The Authority is to appoint two individuals to carry out the role of “Independent Person” which is a new role created under Section 28(7) of the Localism Act 2011. The Authority has a duty under that Act to promote and maintain high standards of conduct for its elected and co-opted members. The Authority has delegated these responsibilities to its Standards Committee comprising five elected members of the Authority.
2. The statutory role of the Independent Person arises where the Authority has received an allegation that one of its members has breached the Authority’s Code of Conduct for Members.
In those circumstances:
 - (a) if the Authority decides to investigate the allegation, the Authority **must** consult the Independent Person, and take their views into account, before making a decision on that allegation; and
 - (b) the Authority **may** seek the views of the Independent Person about any other aspect of the allegation, whether or not it decides to investigate; and
 - (c) the member of the Authority who is the subject of the allegation **may** also seek the views of the Independent Person at any time.
3. In practice when the Authority receives a written allegation of a breach of the Code of Conduct, its Monitoring Officer will decide whether the complaint merits formal investigation or should be dealt with in some other way. If the Monitoring Officer considers it appropriate, s/he may well consult the Independent Person at that stage, and will take into account any view the Independent Person may have before deciding how to proceed.
4. When a complaint has been investigated, the Independent Person will receive a copy of the investigation report from the Authority and asked for his or her view on it and any views s/he may have upon how the Authority should determine the allegation. These views will then be taken into account in the final decision making process. The final decision may be made by the Monitoring Officer where the investigation has concluded that there has been no breach of the Code, but otherwise is likely to be made by the Standards Committee after a hearing.
5. The views of the Independent Person may be sought by the Authority at other stages in the process, for instance by the Monitoring Officer to assist in deciding how an allegation should be dealt with or resolved.
6. It is envisaged the views of the Independent Person will usually be sought by the Authority (through its Monitoring Officer) in writing, either by letter or e mail, and that the response of the Independent Person will usually be conveyed in the same way. On occasions however advice may be sought by telephone or at a meeting.

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Any Independent Person is likely to be expected to attend any hearing which is held by the Standards Committee to decide whether there has been a breach of the code of conduct. If it is decided at that hearing that there has been a breach, the Independent Person will be asked for his or her view as to what action, if any, should be taken as a result.

7. As part of the statutory role, Independent Person will also be available for consultation by any Authority member who is the subject of an alleged breach of the Code of Conduct. Such consultation may be sought at any time during the process and may be carried out by telephone, written correspondence (e mail or letter) or at a meeting (including at a final hearing before the Standards Committee).

(This advisory role to an individual Authority member will only arise where the member is subject to an alleged breach of the relevant code of conduct. An Independent Person will not be expected – and should decline - to give advice to Authority members in any other circumstances. Where such advice is required, Authority members will be expected to seek it from the Monitoring Officer, or some other appropriate Authority officer).

8. In addition to this statutory role, the Independent Person may from time to time be asked by the Standards Committee or the Authority's Monitoring Officer for his or her views about other aspects of its work, for instance the suitability of the Authority's Code of Conduct or the procedures which the Committee adopts for the handling of any allegations of member misconduct. The Independent Person may be invited to attend meetings of the Standards Committee for this purpose.

9. An Independent Person will be encouraged to acquire some understanding of the work of the Authority and how it operates. Support will be provided by the Authority's Monitoring Officer, who will arrange any necessary training and the provision of such information which is considered necessary to enable the Independent Person to perform the role properly.

Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer (or the Standards Committee if appropriate) that the complaint should be referred for investigation or other action?**

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

- 2. Is the complaint about someone who is no longer a member of the Authority, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?**

If yes:

The complaint will be referred to the monitoring officer of that other authority to consider.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**

If yes:

There may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes:

Further action may not be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**

If yes:

Further action will not be warranted.

- 6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**

If yes:

Further action will not normally be warranted.

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7. Is the complaint anonymous?

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.