

REVIEW OF THE NEW ETHICAL GOVERNANCE FRAMEWORK 2012-13	
STANDARDS COMMITTEE 1st JULY 2013	CLASSIFICATION: Open
WARD(S) AFFECTED All Wards	
CORPORATE DIRECTOR Gifty Edila, Corporate Director of Legal, HR and Regulatory Services	

1 SUMMARY

- 1.1 In 2011 a new Localism Act was passed. It places a duty on all councils to promote and maintain high standards of conduct by Members and co-opted members of the authority.
- 1.2 Local authorities are also required to adopt a code of conduct to help them discharge their obligations under the Localism Act.

2. RECOMMENDATIONS

- 2.1 **The Standards Committee is asked to note the report.**

3. REASONS FOR THE DECISION

- 3.1 The report is for noting. There is no decision to be made. Following the introduction of the Localism Act 2011 and new ethical governance

arrangements, the Standards Committee decided to conduct a review of the new arrangements following the first year of operation. This report details lessons learned in the first year.

4. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

- 4.1 This report sets out the review of the new ethical governance framework after its first year of operation and therefore, does not contain any potential financial implications. If the need for additional resources is subsequently identified this would need to be funded from within the existing budget for Governance Services.

5. COMMENTS OF THE CORPORATE DIRECTOR OF LEGAL, HR AND REGULATORY SERVICES

- 5.1 The Localism Act 2011 places the Council under a legal obligation to promote and maintain high standards of conduct amongst elected Members and voting co-optees. The Council is required by law to adopt a Code of Conduct. On 27 June 2012, in response to its legal obligations, the Council adopted a new Code of Conduct.

- 5.2 The Council has established a Standards Committee to help it discharge its legal obligations.

- 5.3 The Council's Monitoring Officer has a legal duty under the Act to establish and maintain a register of interests for Members and voting co-optees. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 details disclosable pecuniary interests that Members and voting co-optees must declare. The Council has discretion to add further requirements to the form for Members to declare non-pecuniary interests.

- 5.4 The Commencement Order and the Regulations brought into force the following requirements:

- Adoption of a Code of Conduct;
- Arrangements to be made for investigating allegations of breaches of the Code of Conduct;
- That the Monitoring Officer establish and maintain a register of interests for elected Members and voting co-optees;
- The Council can adopt standing orders requiring Members and voting co-optees to leave the meeting room when they declare disclosable interests;
- Arrangements to be made for seeking dispensations for Members and voting co-optees who need to declare disclosable interests;

- Appointment of an Independent Person.

6. BACKGROUND

Adoption of a Code of Conduct

- 6.1 At the Council meeting on 27 June 2012 a new Localism Act 2011 Code of Conduct was approved and adopted. The new Code is a combination of the provisions of the Localism Act and Regulations and some of the obligations carried forward from the old Code of Conduct. Recently the Committee on Standards in Public Life has also expanded on the Nolan General Principles to add clarity. A copy is attached at Appendix 1.
- 6.2 To support the Licensing Committee and Planning Sub-Committee, the Standards Committee assisted them in the development and adoption of new Licensing and Planning Codes of Practice.
- 6.3 The Monitoring Officer arranged a series of seminars on the new Code of Conduct for Members, voting and non-voting co-optees and officers. The seminars were well received and responses to some case studies showed a high level of understanding of the provisions of the Code amongst attendees.
- 6.4 Pre-determination continues to be an issue for Members in understanding the extent to which they can participate in decision making after they had actively assisted an individual or external body, in a matter concerning that individual or body. Clarity and guidance will continue to be provided to Members and co-optees. About half of the Members on the Council have not attended any of the seminars on the Code. These Members need to be very careful to ensure they understand and comply with the Code, particularly in view of the new criminal sanction imposed on them by the Act.
- 6.5 From the experiences gained to date, it may be useful for Members to receive a report addressing the issue of pre-determination and bias under the new arrangements, looking at provisions under the old Members' Code of Conduct and how these apply under the new Code.
- 6.6 Experience shows that many Members wait until they are at the meeting to seek advice on whether they need to declare interests. Some of these interests can be complex and unless detailed background information is provided, the advice may not be comprehensive or accurate. Nonetheless Members are legally responsible for getting this right and declaring interests as required by the Code. It is therefore important that Members read reports in advance and, if they believe they may have interests to declare, seek guidance from the Monitoring Officer or their assistants in advance of the meeting.

Register of Interests

- 6.7 The Monitoring Officer has established a register of interests and as required by the Localism Act. The register is also published on the Council's website.
- 6.8 The register was established with the support of Standards Committee. In addition to the statutory disclosable interests, Standards Committee has added 'Other interests' such as membership of external bodies.
- 6.9 All elected Members and voting and non-voting co-optees, except young people on Children and Young People's Scrutiny Commission, have completed a form.
- 6.10 In completing the form, experience shows the areas where Members had the most concern or were uncertain about the requirements were:
- Home address going on the website
 - Spouse or partner's details
 - Membership of other bodies
 - Contracts with the Council
- 6.11 The Monitoring Officer agreed that Members' addresses will not go on the website if they ask for it to be withheld. However their addresses must appear on the hard copy register.
- 6.12 For reasons of confidentiality and right to privacy, Members were concerned about disclosure of their partner's or spouse's details. It was clarified that Members need not disclose names but by law must state employment, trade or vocation, address in the borough and any contracts with the Council.
- 6.13 We have assisted Members, so far as we are aware, to state all the external bodies they sit on. However, the responsibility lies on Members to ensure the disclosure is accurate and up to date.
- 6.14 The requirement to disclose contracts with the Council has proven to be rather confusing for Members and further clarity will be given. A Member would need to disclose in this section of the form if they directly and personally have a contract with the Council, or sit on a body that has a contract with the Council. An example is Members who sit on Hackney Homes Board would need to declare as they are directors of the Board and the Board has a contract with the Council.
- 6.15 On recommendation of the Standards Committee, Council agreed at its meeting on 24 October 2013 to re-introduce a requirement on Members and voting co-opted Members to declare on their register of interests form any gifts and hospitality received with an estimated value of £25. This requirement was removed by the Localism Act 2011 but informal feedback was received from Members requesting the requirement be re-introduced. The Standards Committee also agreed new guidance on declaring gifts and hospitality.

Standing Orders on leaving the meeting room when certain interests are declared

- 6.16 The Localism Act gives the Council power to make standing orders regarding a member who has declared a disclosable pecuniary interest to leave the meeting room when the matter is under consideration. The Council made a standing order requiring Members to leave the meeting when they declare disclosable pecuniary interest. In addition, the Code of Conduct also requires Members to a leave a meeting and not participate in any discussions or vote where contractual, financial, consent, permission or licence matters are under consideration relating to an external body on which the Member sits or relating to an matter where the Member has actively engaged in supporting and individual or organisation.
- 6.17 In practice, experience has shown that where Members have such interests they declare and leave the meeting.

Dispensations

- 6.18 There is provision in the Code for Members to seek dispensations from Standards Committee to enable them to participate in the consideration of a matter in which they have declared disclosable pecuniary interest or other interest. The grounds for seeking dispensations are:
- a) the number of persons prohibited from participating in the meeting would be so great a proportion as to impede the transaction of the business;
 - b) without the dispensation the balance of the political groups on the committee would be affected and affect the outcome of any voting;
 - c) granting dispensation is in the interests of residents;
 - d) without the dispensation, every Member of Cabinet would be prohibited from participating in any particular business to be transacted by Cabinet;
or
 - e) it is otherwise appropriate to grant a dispensation.
- 6.19 To date two applications have been made for dispensations. These were considered by Standards Committee and granted.

Investigation of complaints

- 6.20 Standards Committee has put in place arrangements for dealing with complaints. Initial complaint filtering is managed by the Monitoring Officer. Complaints deemed to be under the Code of Conduct, rather than service delivery issues, are reported to Standards Assessment Sub-Committee. If the complainant is dissatisfied with the outcome, they can refer to the Review Assessment Sub-Committee. Either the Assessment Sub-Committee or Review Sub-Committee can refer a complaint to the full Standards Committee for hearing.

- 6.21 Experience has shown this process works well and Assessment Sub-Committees have dealt with a number of complaints. The full Standards Committee heard a case in October 2012 and made a finding against the Member.
- 6.22 Standards Committee has agreed that when a complaint is upheld this will be reported to Full Council for noting.

Appointment of an Independent Person

- 6.23 The law requires councils to appoint an Independent Person for complaints. Mr Jonathan Stopes-Roe was appointed as the Council's Independent Person on ethical governance matters with effect from 1 July 2012. The role of the Independent Person is to comment on the investigation of complaints. The Independent Person has helpfully considered and commented on complaints reported to the Standards Assessment-Sub-Committee.
- 6.24 Experience shows that the Assessment Sub-Committee members welcome and value this independent contribution to the process. They often refer to the views expressed by the Independent Person in their deliberations. Reasons for their decision invariably include the views expressed by the Independent Person.
- 6.25 Mr Stopes-Roe has readily stepped into the role following his appointment. He has received internal and external training and shows enthusiasm and commitment. As soon as a complaint is referred to him, he responds immediately.
- 6.26 Mr Stopes-Roe has also been available to Members against whom complaints have been made. The procedure enables a Member who is a respondent to a complaint to contact him to discuss.

Guidance to Members

- 6.27 Numerous guidance produced by the Council's Monitoring Officer and the Department for Communities and Local Government have been circulated to Members to assist them in operating under the Code of Conduct.

7. COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 7.1 In January 2013 the Committee on Standards in Public Life produced a report called 'Standards matter – A review of best practice in promoting good behaviour in public life'.
- 7.2 The Committee on standards in Public Life produced a revised version of the Seven Principles of Public Life. They have also indicated that they will in future conduct a review into standards in local government. In their report they commented on the evolution of the standards regime in local government from the Local Government Act 2000, followed by changes in 2007 and finally the Localism Act 2011, abolishing the old regime and introducing a new ethical framework.

7.3 They also said in their report
“The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely. The arrangements place a particular onus on the Local Government Association to provide leadership for the sector and to ensure that they work in practice.”

7.4 The Committee on Standards in Public Life also expressed two main concerns about the new ethical framework:

- Local authorities previously had power to suspend a Member for breaching the Code of Conduct. The only sanctions now are censure or criminal prosecution. Some recent examples in local government of misconduct would not pass the criminal standard of proof but required a stronger sanction which is more than censure.
- Second concern is the interesting involvement of an Independent Person in disciplinary processes. Previous complaints were dealt with by Standards Committees independently chaired by individuals who are not Members. There is doubt that this new arrangement will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.

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APPENDICES

Appendix 1 – Nolan General Principles

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