



Report for:	Standards Committee 20 December 2011	Item number	To be added by the Committee Section
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Title:	The Localism Act 2011 – The Amended Standards Regime
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Report authorised by :	Bernie Ryan, Head of Legal Services and Monitoring Officer
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Lead Officer:	Victoria Wyatt, Acting Senior Lawyer victoria.wyatt@haringey.gov.uk 020 8489 4636
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Ward(s) affected: N/A	Report for Key/Non Key Decision: N/A
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1. Describe the issue under consideration

The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The Government's stated intention is to bring these changes into force in April 2012, to allow a new system to be put in place at Annual Council in May 2012.

This report provides an update for the Standards Committee describing the changes to the standards regime. The views of the Standards Committee are sought on the issues described within the report.

2. Cabinet Member Introduction

N/A

3. Recommendations



- 3.1 The Standards Committee is asked to note and comment upon the contents of the report and the upcoming changes to the standards regime.
- 3.2 That the Standards Committee notes that the Council will need to prepare a new Code of Conduct, together with proposals for the new register of interests, and the Committee is asked to comment on the approach to be taken in this respect. By way of example the current code could be amended to comply with the Localism Act 2011 and a more fundamental review of the Code done over a longer timescale.
- 3.3 That the Standards Committee notes that the Council will need to prepare draft “arrangements” for dealing with standards complaints and for action to be taken where a member is found to have failed to comply with the Code of Conduct. The view of the Standards Committee is sought on any such proposals. By way of example do members of the Committee consider the Council should retain a Standards Committee or other such committee carrying out these functions albeit it will now not have voting independent members or an independent Chair.
- 3.4 That the Standards Committee notes the requirement for the appointment of an “Independent Person”

4. Other options considered

N/A

5. Background information

The Localism Act 2011 has reformed the regulation of local authority members and co-opted members. The detailed changes are set out below.

5.1 Duty to promote and maintain high standards of conduct

The Council will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

5.2 Code of Conduct

In discharging this obligation, the Council must adopt a code which deals with the conduct expected of members and co-opted members of the authority when acting in that capacity. This is narrower than the old system, which could in some circumstances cover the behaviour of members acting in some other capacity, for example in their private lives, if there was sufficient connection between that conduct and their office as



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a councillor. The exact scope of “acting in that capacity” remains to be determined.

The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. The Council’s new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The previous additional principles of “personal judgement”, “duty to uphold the law”, “stewardship” and “respect for others” no longer apply.

The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests”, broadly equating to the current prejudicial interests and members will likely have a disclosable pecuniary interest if they stand to gain or lose in some financial or material way. The provisions of the Act also require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. Until the regulations are published, defining disclosable pecuniary interests, it is difficult to suggest what additional disclosure would be appropriate.

The duty to ensure consistency with the new list of principles, and to make provision for the registration and disclosure of interests, does not mean that the code cannot cover other issues. This is a matter of choice.

The Council may either revise the existing code or adopt a new code. The Council will need to make changes to the existing codes to reflect the new disclosable pecuniary interests and to deal with the registration of interests provisions, which will be subject to further Regulations. The Council must publicise the adoption, revision or replacement of the code in such a way that will bring it to the attention of persons who live in the area. Any new code will have to be approved by full Council.

5.3 Standards Committee



The Act will repeal Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will be no requirement for a Standards Committee but there will still be a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –

3.1 The composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to only one member of the Executive on the Standards Committee will cease to apply

3.2 The current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee

The Council must decide on the set up of a Standards Committee and how it is to be composed. If the Council retains a Standards Committee then the terms of reference will need to be changed to comply with the Localism Act 2011.

5.4 Dealing with Misconduct Complaints – “Arrangements” and Independent Person(s)

5.4.1 “Arrangements”

The Act requires that the Council adopt “arrangements” under which allegations of breach of the Code of Conduct can be investigated and decisions on allegations can be made. Complaints can only be dealt with in accordance with such “arrangements”, which must set out in some detail the process and the actions which may be taken against a member who is found to have failed to comply with the new Code of Conduct.

The advantage is that the Act repeals the requirements for separate Assessment, Review and hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

5.4.2 Independent Person(s)



The “arrangements” must include provision for the appointment by Council of at least one Independent Person, whose views must be sought and taken into account before the authority makes a decision on an allegation it has decided to investigate. The Independent Person’s views may also be sought by a member or co-opted member whose behaviour is subject of an allegation.

The Independent Person cannot be a member, co-opted member or officer of the authority, a member or relative or close friend of any of those people, nor can the Independent Person have been a member, co-opted member or officer of the Council at any time in the last five years.

The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

The Act permits the payment of allowances and expenses to the Independent Person. As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, any remuneration would fall outside the scheme of members’ allowances. It would be appropriate to undertake a proper review of the function of the Independent Person before setting any remuneration.

The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the Council.

5.4.3 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided some basis for filtering out trivial complaints. It may be 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 consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee where he feels that it would be inappropriate for him to take a decision on it, for example where he has previously advised the member on the matter or the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. The Monitoring Officer could report



on any such issues to the Standards Committee by way of regular update.

5.4.4 “No Breach of Code” finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to the Standards Committee who take the decision to take no further action. In practice, it could be possible to delegate to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate or the Standards Committee could retain this power. Views of the members would be welcomed on this matter.

5.4.5 “Breach of Code” finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may still be an opportunity for local resolution, avoiding the necessity of a hearing. The investigation report alone can be sufficient to identify appropriate remedial action and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it could be that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome. A summary report for information would be provided to the Standards Committee. Alternatively all cases could be referred to the Standards Committee. Views of the members of the Committee are again sought on this matter as to whether any further delegation is necessary or advisable.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings Panel constituted as a Sub-Committee of 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 Hearing Panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

5.4.6 Action in response to a Hearing finding of failure to comply with Code

The Act does not give the Council or its Standards Committee any powers to impose sanctions, such as suspension or requirements for training or an apology, on members. Where a failure to comply with the Code of Conduct is found, the range of actions which the Council can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions



effectively, rather than “punishing” the member concerned. In practice, this might include the following –

- Reporting its findings to Council for information;
- Recommending to the member’s Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to arrange training for the member;
- Removing the member from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

5.4.7 Appeals

There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

The Council 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.

5.5 Register of Members Interests

Section 29 of the Act provides that the monitoring officer must establish and maintain a register of members’ interests, and it is for the authority to determine what is to be entered in that register. No entries should be retained on the register if the interest no longer exists or the person concerned is no longer a member. The monitoring officer must ensure that the register is available for public inspection and on the Council’s website.

Members are obliged within 28 days of being appointed as a member or voting co-opted member to notify the monitoring officer of a “disclosable pecuniary interest” held at the time of notification. As stated above at paragraph 2, regulations will determine what is to count as a disclosable pecuniary interest. It will include the interests of members themselves and (if the member is aware of the interest) those of their spouse, civil



partner, or any person living with them as their spouse or civil partner. This is narrower than the current code. The monitoring officer must then ensure that it appears in the register. There is no duty, however, to keep these particulars up to date. New interests arising on the 29th day or thereafter, until the next election, need not be notified unless the member needs to disclose the interest under the following rules.

As before, if the member's interest is such that he or she, and the monitoring officer, consider that there is a risk of the member or some connected person being subject to violence or intimidation, then neither the entry in the register or the disclosure at the meeting need specify the nature of the interest.

5.6 Disclosure of Interests and Withdrawal from Meetings

If a member has a disclosable pecuniary interest in any matter considered at a meeting at which that member is present and the member is aware of the interest, the member must disclose the interest to the meeting. It is not clear whether the member needs to explain the nature of the interest, but this is probable. This requirement applies to executive or cabinet meetings, and executive committees and sub committees, but not explicitly to other informal meetings. The code could provide for wider application.

In a change from the current requirements, members do not need to disclose the disclosable pecuniary interest if it is entered in the authority's register, or if they have sent off a request to the Monitoring Officer to register it (a "pending notification"). Members of the public would then need to read the register of interests if they are no longer to be declared at the meeting.

If a member discloses an interest, he or she must not participate in any discussion of, or vote on, the matter at the meeting, subject to any dispensations which may apply. There is no statutory requirement for the member to leave the room, but the Council may make standing orders that have this effect. The Act does not define "discussion" but this would appear to preclude making representations as currently permitted under 12 (2) of the Code of Conduct.

The requirement also applies to any decisions taken by a single executive member or a ward member exercising delegated powers in his or her ward. In such cases, the member must not take any steps, or further steps, in relation to the matter (apart from making arrangements for someone else to deal with it).

If the member discloses an interest, he or she must notify the monitoring officer of the interest, so that it can be added to the register.



5.7 Offences

Section 34 of the Act provides that a person commits an offence if, without reasonable excuse, he or she:

- fails to notify the monitoring officer of a disclosable pecuniary interest within the time period;
- participates in any discussion or vote at a meeting where he or she has a disclosable pecuniary interest; or
- takes any steps or further steps in relation to the matter in which he or she has a disclosable pecuniary interest, where he or she would otherwise take the decision personally.

An offence is also committed if the information provided to the monitoring officer is false or misleading, and the member knows it is false or misleading, or is reckless as to whether the information is true and not misleading. Prosecution must be by or on behalf of the Director of Public Prosecutions. A member guilty of an offence is liable to a fine not exceeding level 5 on the standard scale (currently £5,000). A court may also disqualify the member from being or becoming a member for a maximum of 5 years.

Although the Council has to consider whether it is appropriate for the new code of conduct to contain provisions about the registration of other interests (that is to say, interests that are not “disclosable pecuniary interests”), and standing orders about leaving the room, there is no specific statutory obligation to notify the monitoring officer of those interests and no criminal offence connected with these requirements. Notwithstanding this the views of members of the Committee are sought on both aspects e.g. do we broadly keep the current provisions and update where necessary.

5.8 Dispensations

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

In future, a dispensation will be able to be granted in the following circumstances –

- that so many members of the decision-making body have disclosable pecuniary interests in a matter that it would “impede the transaction of the business”, that is, the meeting would be inquorate;
- without the dispensation, the representation of different political groups on the body transacting this particular business would be so upset as to alter the likely outcome of any vote relating to the



- business. This assumes that members are predetermined to vote on party lines on the matter;
- granting the dispensation is in the interests of persons living in the authority's area;
 - in the case of authorities operating executive arrangements, without the dispensation each member of the authority's executive would be prohibited from participating (assuming that Cabinet is then inquorate); or
 - it is otherwise appropriate to grant a dispensation.

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

The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. Delegation for dispensations to the Monitoring Officer would enable dispensations to be granted "at the door of the meeting", particularly useful for the first and fourth grounds listed. Members' views are sought on whether the Monitoring Officer should have discretion to grant dispensations.

5.9 Transitional Arrangements

Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;
- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

6. Comments of the Chief Financial Officer and Financial Implications

The Chief Financial Officer has been consulted on the contents of this report and there are no financial implications at this stage.



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7. Head of Legal Services and Legal Implications

The legal implications are detailed within the body of this report.

8. Equalities and Community Cohesion Comments

There are no equalities issues at this stage.

9. Head of Procurement Comments

N/A

10. Policy Implications

There are no direct policy implications at this stage.

11. Use of Appendices

N/A

12. Local Government (Access to Information) Act 1985

The Localism Act 2011