



<b>Report for:</b>	Standards Committee 22 March 2012	<b>Item number</b>	To be added by the Committee Section
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<b>Title:</b>	The Ethical Framework
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<b>Report authorised by :</b>	Bernie Ryan, Head of Legal Services and Monitoring Officer <i>Bernie Ryan</i>
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<b>Lead Officer:</b>	Graham White, Principal Project Lawyer <a href="mailto:graham.white@haringey.gov.uk">graham.white@haringey.gov.uk</a> 020 8489 2751
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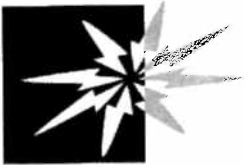
<b>Ward(s) affected</b>  N/A	<b>Report for Key/Non Key Decision:</b>  N/A
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## 1. Describe the issue under consideration

- 1.1 At its last meeting on 20 December 2011 the Committee considered a report upon the fundamental changes to the system of regulation of standards of conduct for local authority members brought about by the Localism Act 2011.
- 1.2 This report presents proposals for a new Members' Code of Conduct, Arrangements for dealing with allegations that a member or co-opted member has failed to comply with the Code, the establishment of a new Standards Committee and the appointment of an Independent Person. The views of the Committee are sought to assist in the development of the proposals prior to submission to Council for approval.

## 2. Cabinet Member Introduction

- 2.1 N/A



### 3. Recommendations

#### 3.1 The Standards Committee is recommended to:

- (i) Approve the general principles the draft Code of Conduct attached at Appendix 1 and the Arrangements for dealing with allegations that a member or co-opted member has failed to comply with the Code attached at Appendix 2;
- (ii) Recommend to Council approval of a Code of Conduct based on the draft Code attached at Appendix 1 subject to such amendments as are necessary as a result of Regulations, recommendations from the Local Government Association and to such comments as the Committee may wish to make;
- (iii) Recommend to Council approval of Arrangements for dealing with allegations that a member or co-opted member has failed to comply with the Code based on the draft Arrangements attached at Appendix 2 subject to such amendments as are necessary as a result of Regulations, recommendation from the Local Government Association and to such comments as the Committee may wish to make;
- (iv) Recommend to Council to create a new Standards Committee at its Annual Meeting in May 2012 with the terms of reference as set out at Appendix 3 subject to such amendments as may be deemed necessary by the Monitoring Officer
- (v) Submit any comments the Committee may wish to make regarding the composition and implementation of the new Standards Committee;
- (vi) Note the need for the appointment of an Independent Person and the discretion to appoint at least one Deputy to be in place in time for the implementation of the new standards regime.



#### 4. Other options considered

4.1 Pursuant to the Localism Act 2011 the Council is under a statutory duty to establish a newly ordered ethical framework:

- (i) Under section 27(2) it must adopt a code of conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity.
- (ii) Under section 29 (1) the Monitoring Officer must establish and maintain a register of interests of members and co-opted members.
- (iii) Under Section 28 (6) the Council must have in place arrangements under which allegations that a member or co-opted member has failed to comply with the Code can be investigated and decisions made upon the allegations.
- (iv) Under section 28(7) the arrangements put in place must include provision for the appointment of at least one Independent Person whose views are to be sought and taken into account by the Council before it makes its decision on allegations which have been investigated and whose views upon an allegation may be sought by the Council at other times and may be sought by a member who is the subject of an allegation.

These statutory duties do not facilitate alternative courses of action.

4.2 The establishment of a new Standards Committee is at the Council's discretion and alternatives to not creating a committee are considered in the body of the report.

#### 5. Background information

5.1 The report submitted to the Committee on 20 December 2011 provided details of the provisions of the Localism Act 2011 which will replace the current ethical framework when implemented in the relatively near future. The Committee noted the imminent changes and offered helpful comments upon various aspects of the arrangements which need to be implemented in Haringey.



5.2. In respect of the Members' Code of Conduct the Committee favoured amendment of the current code in order to comply with the Localism Act but that a more fundamental review be carried out over a longer timescale. Attached at Appendix 1 to this report is a draft Code which captures the mandatory elements of the new regime whilst endeavouring to retain current elements which are no longer a statutory requirement but may be added at the Council's discretion.

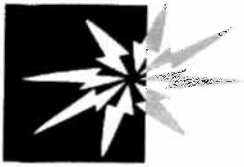
5.3. The mandatory elements are by no means as extensive as previously required and at its most basic all that is required is consistency with the Seven Principles of Public Life (The Nolan Principles) published by the Committee on Standards in Public Life together with specific provisions about the registration and declaration of disclosable pecuniary interests, non-compliance with which are criminal offences.

5.4. However in order to promote and maintain high standards of conduct, as the Act requires, a broader and more comprehensive set of provisions is proposed retaining much of the current code which whilst no longer a statutory requirement provides a framework which members understand and are familiar with and which requires high standards of conduct to be maintained.

5.5 At the time of writing this report the Local Government Association is proposing to approve and publish very shortly both minimal and expanded model Codes of Conduct. It is anticipated that the expanded version will be in somewhat similar style to the draft attached at Appendix 1. If a LGA model is substantially similar it might be beneficial to adopt it as there is merit in sharing the ethical framework with other authorities, whereby their experiences can be taken in account in the implementation and development of Haringey's ethical framework.

**6 Members' Code of Conduct** Generally and as far as is possible, the draft Code at Appendix 1 shows required paragraphs taken from the current code in black typeface, amendments to those paragraphs as a result of the Localism Act in red, and paragraphs which can be added at the Council's discretion in blue. The following commentary explains why provisions have been included and the impact of them,

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6.2 Part 1: General Provisions – Introduction

This new section provides an overview of the principles and statutory provisions upon which the Code is based. It refers to consistency with the Nolan Principles plus additional principles which the Council may add (derived from the current code). It refers to the requirements to register interests and to the criminal offences created by the Localism Act 2011.

6.3 The General Principles

In the current code the principles are a preamble and not an integral part. They have now been integrated fully so that failure to adhere to the principles will be a breach of the Code. The principles of the current code have all been retained but are now shown in the order of those which the Act requires (the Nolan Principles) followed by those which may be added by the Council. In the prescribed principles, honesty and integrity, amalgamated in the current code, have been separated out to match the Nolan Principles specifically as set out in the Localism Act

6.4 Application of the Code

This section combines important changes in the Act as well as additional clarification. The Code applies only when a member is acting in his/her capacity as a member and does not extend to any other situation as is the position at present. A gloss on what is meant by acting in the capacity as a member provides clarity.

6.5 General obligations

These are the general obligations which were prescribed previously but are no longer mandatory. They contain useful guidelines upon appropriate /inappropriate conduct and are considered worthy of retention.

6.6 Part 2: Members Interests – Disclosable Pecuniary Interests

The biggest change in the standards regime is the abolition of personal and prejudicial interests and the creation of Disclosable Pecuniary Interests. Whilst the Localism Act provides that registration and disclosure of such interests are legal requirements with criminal penalties for failure to comply, at present there is no definition of a Disclosable Pecuniary Interest though Regulations are imminent. The Act provides that a Disclosable Pecuniary Interest has to be disclosed if the interest is the member's or the member's spouse or partner and the member is aware of the interest. This is the first time that an interest of a third party has to be registered and disclosed when it does not relate back to the member's own circumstances except by association. Previously it was necessary for such an interest to have a beneficial effect on the member's financial position or well-being in order to be disclosable.



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6.8 Prejudicial Pecuniary and Non-Pecuniary Interests

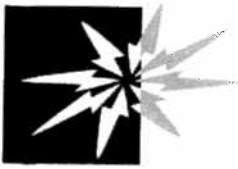
It is not proposed that the disclosure of all pecuniary and non-pecuniary interests should result in members being excluded from participation and voting but where a member's judgment in the public interest is likely to be adversely affected due to an interest then the constraints which apply to Disclosable Pecuniary Interests should also apply to prejudicial pecuniary and non-pecuniary interests. This retains the distinction which applied under the current regime where exclusion applied to prejudicial interests (using the same definition as now proposed) and personal interests. Failure to observe such provisions would not attract criminal liability but would be a breach of the Code.

6.9 Disclosure of Interests

The Act requires the registration of Disclosable Pecuniary Interests within 28 days of becoming a member but once registered it is not necessary as a matter of law to declare the interest at every meeting where it arises even though the member would be guilty of an offence if he/she participated or voted. This is unsatisfactory and it would be preferable for a declaration at a meeting to be necessary for all interests whether or not registered already. This is provided for here. Provision is also made to ensure the proper notification and recording of interests which are not Disclosable Pecuniary Interests held by a member exercising an executive function. Further guidance is given upon matters which do not amount to Disclosable Pecuniary Interests (to be confirmed following the publication of Regulations which define Disclosable Pecuniary Interest).

6.10 Effect of Disclosable Pecuniary Interest on participation

This section sets out what members must do and what they cannot do having declared a Disclosable Pecuniary Interest. The constraints are similar to a declaration of a prejudicial interest at present though there is



one significant difference. Having declared a Disclosable Pecuniary Interest a member may not participate or participate further in any discussion of the matter at a meeting. At present where the public may attend a meeting for the same purpose, a member may declare a prejudicial interest, make representations, answer questions or give evidence relating to the business and then leave the meeting. It appears that the Localism Act has removed that capacity in relation to a Disclosable Pecuniary Interest, though discussion upon the interpretation of the provision is continuing between the professional associations and DCLG.

**6.11 Part 3: Registration of Members' Interests**

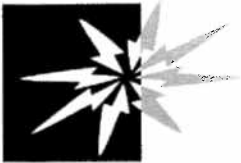
The law requires the notification of Disclosable Pecuniary Interests within 28 days of becoming a member, but it is considered that members should notify all interests within that timeframe and be required to notify of any new interests or changes to registered interests within 28 days of becoming aware of them. This places the onus on members to keep their registered interests up to date. Members must act themselves to notify and not wait for the periodic reminder. Sensitive information is protected from public disclosure, as at present and is defined somewhat more widely as it now embraces a person with whom the member is connected and not merely one with whom the member lives.

**6.12 Written Undertaking**

At present a member cannot act as a member unless he/she has given an undertaking to observe the Code. This is contained within the Declaration of Acceptance of Office which all members sign shortly after election. This legal requirement is removed but it is still considered worthwhile for members to give a written undertaking to observe the Code as it concentrates the mind upon the obligations and emphasises that these obligations are not trivial but a serious commitment to observing high standards of conduct at all times whilst acting as a member.

**6.13 Failure to fulfil obligations of the Code**

The Localism Act 2011 creates a number of criminal offences for failure to adhere to certain provisions of the Code. Appendix 2 to the Code sets out those offences. Failure to fulfil the obligations of the Code could lead to allegations that a member has breached the Code and also that the member has committed a criminal offence.



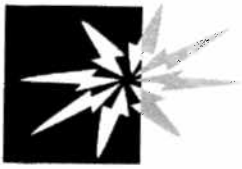
## **7. Arrangements for dealing with allegations that a member or co-opted member has failed to comply with the Code**

- 7.1 Attached at Appendix 2 are the draft arrangements for dealing with allegations that a member or co-opted member has failed to comply with the code. This is a somewhat streamlined version of the current statutory arrangements, retaining the Monitoring Officer as the lead officer and the Standards Committee and its Sub-Committees as the bodies which determine allegations of failure to comply.
- 7.2 It is proposed that the Monitoring Officer has modest powers to dismiss allegations which for one of several reasons do not match meet the basic criteria. All other allegations are considered initially by the Assessment Sub-Committee which may either dismiss the allegation or instigate an investigation by the Monitoring Officer.
- 7.3 The Monitoring Officer will submit his Investigation Report to the Standards Committee which, after consultation with the Independent Person, may either dismiss the allegation or refer to the Hearing Sub-Committee for hearing and determination.
- 7.4 Following a hearing and having sought and taken account of the views of the Independent Person, the Sub-Committee may determine the allegation and if a breach of the Code is its finding, it may go on to impose one of a number of sanctions which are more limited than hitherto and do not extend as far as suspension from office.
- 7.5 These arrangements fulfil legal requirements of fairness and provide a robust process whereby allegations will be handled equitably. There is no appeal/review stage. An aggrieved party would need to refer the matter to the Ombudsman or the Courts.

## **8. Standards Committee**

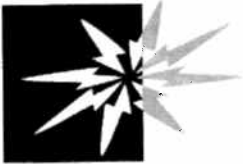
- 8.1 The Local Government Act 2000 provided that each authority must establish a Standards Committee comprising members of the Council and Independent voting members, chaired by an Independent member. The political balance requirements did not apply.
- 8.2 The functions of Standards Committees were prescribed by Section 54 of the Local Government Act 2000. The general functions were promoting and maintaining high standards of conduct by members





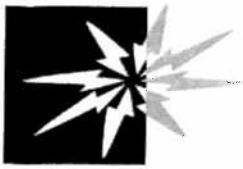
and co-opted members of the authority and assisting members and co-opted members to observe the authority's code of conduct. Without prejudice to those general functions, specific functions were specified, being advising the authority on the adoption or revision of a code of conduct, monitoring the operation of a code of conduct and advising and training members on the code of conduct. An authority could arrange for the Standards Committee to exercise such other functions as it considered appropriate.

- 8.3 The Localism Act 2011 amends the Local Government Act 2000 to the effect that the provisions which established the statutory Standards Committee are abolished. It is currently anticipated that these provisions will be brought into force on 1 July 2012 at which point this Committee will cease to exist in its present form.
- 8.4 The question for the Council is whether it wishes to create a new Standards Committee charged with most of the functions which are currently undertaken. Now there is no specific statutory basis for such a Committee, all functions carried out will be Council (non-executive) functions.
- 8.5 Moreover the composition of the Committee must be very different from that which currently obtains. The Committee would be subject to the normal proportionality provisions. The present restriction for only one member of the Executive on the Standards Committee will cease and there is no statutory requirement to appoint independent members to the committee.
- 8.6 The Committee could co-opt the current Independent members if it wished to retain their experience but they would not be voting members and they would not fulfil the criteria of the Independent Person(s) whom the Council is under a duty to appoint and to seek and take account of the views of before making decisions upon allegations of failure to comply with the Code of Conduct. Indeed, by virtue of Section 28(8)(b) of the Localism Act 2011, a person may not be appointed as an Independent Person if at any time during the preceding 5 years that person was a member, co-opted member or officer of the authority. This means that the current experienced Independent members of the Standards Committee will not be eligible to be appointed as an Independent Person for at least 5 years. The local government community regards these provisions as draconian and discussions are continuing with DCLG with a view to moderating the exclusion criteria so that the experience of the current Independent Members is not lost entirely. The anticipated Regulations will clarify the issue.



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- 8.7 It would be beneficial if the Independent Person, when appointed, was co-opted onto the Standards Committee thereby providing a link between the statutory role regarding the determination of allegations of failure to comply with the Code and the ongoing development of the ethical framework. The Independent Person could act only in a non-voting capacity.
- 8.8 The Committee would be subject to the same requirements upon confidential and exempt information as any other committee and will not have the benefit of additional exemptions upon which it can rely at present, for example following a hearing to reach its decision in private.
- 8.9 The ethical framework is a Council (non-executive) function and without a statutory Standards Committee the statutory responsibilities for promoting and maintaining high standards of conduct by members will revert to the Council. Whilst the Council will wish to retain the most important decisions such as the adoption or revision of the Code of Conduct, the continuing responsibilities will need to be delegated as appropriate in order to maintain a high profile in the continuing development of appropriate standards of conduct and to monitor progress. Without a committee charged with such responsibilities there will not be a specific focal point for matters relating to the ethical framework.
- 8.10 The Monitoring Officer has his own statutory responsibilities, for example to establish and maintain the Members' Register of Interests, and it would be unduly onerous to place the entire responsibility upon him subject only to reference to Council. For example whilst the determination of allegations of failure to comply with the code could all be delegated to an officer it would be more appropriate for hearings upon investigations and decisions in this regard to be taken by members after consultation with the Independent Person.
- 8.11 The options of the Council retaining complete responsibility for the ethical framework or for the Monitoring Officer to be given delegated authority for the whole are not considered to be viable rather that the best option is for the establishment of a new Standards Committee which can take a member lead in championing high standards of conduct.
- 8.12 Attached at Appendix 3 are proposed terms of reference which are based on the current terms of reference with amendments as appropriate having regard to the abolition of the previous standards regime.



- 8.13 One of the key roles for the Standards Committee will be the assessment and determination of allegations of failure to comply with the Members' Code of Conduct. It would be unwieldy for the entire Committee to have to convene to make assessments of allegations and for hearings and it is anticipated that the Standards Committee will appoint Sub-Committees to undertake those functions. This is built into the arrangements attached at Appendix 2 to this report.

## **9 The Independent Person**

- 9.1 Section 28 of the Localism Act 2011 provides that arrangements which the Council must put in place for dealing with allegations of failure to comply with the Members' Code of Conduct must include provision for the appointment of at least one Independent Person.
- 9.2 An Independent Person is someone whose views are sought and taken into account by the authority before it makes its decisions on an allegation that it has decided to investigate. The Independent Person's views may also be sought by the authority in relation to an allegation at other stages in the process or by a member or co-opted member if that person's behaviour is the subject of an allegation.
- 9.3 The Act provides that a person is not independent if he/she is a member, a co-opted Member or an officer of the authority or a relative or close friend of thereof. Furthermore a person is not eligible for appointment if during the preceding 5 years the person was a member, co-opted member or an officer of the authority. As mentioned in paragraph 8.6 above there is continuing discussion on this at national level.
- 9.4 A person may not be appointed as an Independent Person unless the post has been advertised, an application has been submitted and the appointment has been approved by a majority of the members of the authority.
- 9.5 Although the minimum statutory requirement is the appointment of one Independent Person, it would be useful to have one such person plus at least one deputy who could act in the event of the Independent Person being indisposed or conflicted.
- 9.6 The Council will need to advertise, interview applicants and have the appointments approved by Council by no later than the Annual Meeting in May in order to be in time for implementation of the



revised arrangements on 1 July 2012. For future appointments it is proposed that the new Standards Committee or more likely a Sub-Committee appointed for the purpose will have the responsibility of interviewing applicants and making recommendations to Council.

## **10 Questions for Members to consider**

- 10.1 To assist the Committee to consider all relevant aspects of issues concerning the new ethical framework, a number of key questions have been set out at Appendix 4.

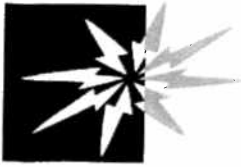
## **11. Comments of the Chief Financial Officer and Financial Implications**

- 11.1 The proposals set out will enable the Council to comply with the revised statutory requirements in relation to standards of conduct for local authority members brought about by the Localism Act 2011.
- 11.2 The requirement to appoint at least one Independent Person is likely to lead to some small one-off costs such as advertising and interviewing, as set out in paragraph 9.6, and potentially some incidental subsistence expenses however at this stage it is expected that these will be low and met from within existing council budgets.
- 11.3 As set out in Section 8 above, the current Standards Committee would cease to exist however, this report proposes to continue with a Standards Committee from July 2012 albeit with a different composition and chaired by an elected Member. Any Special Responsibility Allowance attached to this role would be an additional cost to the authority.

## **12 Head of Legal Services and Legal Implications**

- 12.1 This is a report from the Head of Legal Services and legal implications are detailed in the body of the report.
- 12.2 The Council is under statutory obligations to introduce its own standards regime to take effect upon the abolition of the arrangements established by the Local Government Act 2000, which is likely to be effected by Regulations on 1 July 2012. The Council must approve the new arrangements prior to the implementation date or there will be no ethical framework in place to supersede the current arrangements, and the Council will be in breach of statutory duty.

## **13. Equalities and Community Cohesion Comments**



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13.1 The Equalities team have been consulted on the contents and you have no specific comments to make.

#### **14 Head of Procurement Comments**

14.1 N/A

#### **15. Policy Implications**

15.1 The Policy team have been consulted on the contents and you have no specific comments to make.

#### **16 Use of Appendices**

16.1 Appendix 1: Draft Members' Code of Conduct

16.2 Appendix 2: Draft Members' Code of Conduct Complaints procedure

16.3 Appendix 3: Standards Committee Draft Terms of Reference

16.4 Appendix 4: Questions for Members to consider

#### **17 Local Government (Access to Information) Act 1985**

17.1 None

