



Report for:	Council 21 May 2012	Item Number:	
Title:	The Ethical Framework		
Report Authorised by:	Bernie Ryan Head of Legal Services and Monitoring Officer		
Lead Officer:	Graham White Principal Project Lawyer		
Ward(s) affected: N/A	Report for Key/Non Key Decisions: N/A		

1. Describe the issue under consideration

1.1 The Localism Act 2011 has abolished the ethical framework which was brought in by the Local Government Act 2000 and replaced it with new powers and duties which leave an element of discretion for local authorities to decide how far to go in order to fulfil their duty to promote and maintain high standards of conduct. Although Regulations are awaited it is anticipated that the new arrangements will be brought into effect from 1 July 2012, when the current Members' Code of Conduct and the statutory Standards Committee will cease to exist. The Standards Board for England was abolished on 31 March 2012.

1.2 Under the new ethical framework the Council is under a duty to approve a code of conduct for members together with arrangements for dealing with allegations that a member has failed to comply with the code. However there is no prescribed code and each authority must develop and introduce its own code. In order for a code and the attendant arrangements to be approved by Full Council before 1 July 2012 it is necessary to submit recommendations to this meeting. This report proposes a code and arrangements set out at Appendices 1 and 2 for implementation when the new ethical framework is brought into effect.



1.3 Whilst the current Standards Committee will be abolished when the new regime is implemented, it will continue until at least 30 June and thereafter the establishment of a new Standards Committee will be at the Council's discretion. The membership of any new committee would be subject to the usual proportionality provisions and there would be no requirement to co-opt independent members though that remains possible at the Council's discretion. If a new Committee is to be established, its terms of reference and membership need to be approved by the Council. This report also proposes the establishment of a Standards Committee with terms of reference and membership as set out at Appendix 3.

1.4 Subject to Full Council's agreement to the proposals in this report, various constitutional changes will be required to give effect to the new regime, including the replacement of the current Members' Code of Conduct. These changes are set out at Appendix 4.

2. Cabinet Member introduction

N/A

3. Recommendations

3.1 It is recommended that with effect from the date upon which the new ethical framework comes into effect as prescribed by Regulations;

- (i) The Members' Code of Conduct attached at Appendix 1, be approved;**
- (ii) The Monitoring Officer be authorised to make any necessary amendments to the code in order to comply with Regulations;**
- (iii) The Arrangements for dealing with allegations that a member has failed to comply with the code, attached at Appendix 2, be approved;**
- (iv) A Standards Committee, an Assessment Sub-Committee and a Hearing Sub-Committee be established upon the terms of reference set out at Appendix 3;**
- (v) The amendments to the Constitution consequential to the changes to the ethical framework, as set out at Appendix 4, be approved.**

4. Other options considered

4.1 The Localism Act 2011 makes it a duty upon local authorities to approve a code of conduct and attendant arrangements to deal with allegations of breach of the code. Whilst there is some discretion as to the content of those documents there is no alternative course of action to the approval of a code of conduct and arrangements for dealing with allegations of failure to comply with the code.



4.2 The establishment of a Standards Committee is at the Council's discretion. The alternative option is not to establish such a committee and to place the duty to promote and maintain high standards of conduct elsewhere.

5. Background information

Code of Conduct

- 5.1 The Localism Act requires a code to be consistent with the Seven Principles of Public Life (The Nolan Principles) and to contain provisions regarding the disclosure and registration of disclosable pecuniary interests, a new category of interests not yet defined. Beyond that it is left to each authority to determine what is necessary to promote and maintain high standards of conduct amongst members.
- 5.2 At its meeting on 20 December 2011 the Standards Committee considered the principles driving the new ethical framework and felt that a code of conduct as close as possible to the current code should be the initial code with a more fundamental review conducted over time if necessary. The Governance Review Delivery Group at its meeting on 24 January 2012 agreed that the current Standards Committee should be consulted and provide recommendations on the proposals. The Monitoring Officer submitted a draft code and draft arrangements to the Standards Committee on 22 March 2012 both of which broadly found satisfaction though with a number of amendments and simplifications suggested for the Monitoring Officer to consider. Revised documents were submitted to the members of the Governance Review Delivery Group on 30 April with a deadline for response by 8 May. No further comments were received.
- 5.3 Attached at Appendix 1 is a draft code based on the current code together with the statutory requirements. Efforts have been made to simplify the procedures somewhat, for example, so that minor personal interests once registered in the register of members' interests need not be disclosed at subsequent meetings.
- 5.4 The code sets out the seven Nolan Principles, a reduction of four from those in the current code. The code applies only when a member is acting in the capacity of a member and has no effect in relation to conduct at any other time. The current general obligations which identify conduct which could amount to a breach are repeated as they amplify the conduct required to meet the Nolan Principles.
- 5.5 The Act only requires the disclosure of disclosable pecuniary interests and leaves it to authorities to include provision it considers appropriate in respect of other interests. At present disclosable pecuniary interests have not been defined and Regulations are awaited. However the Act does provide that such interests are ones which are a member's own or the interests of the member's spouse or partner where the member is aware of those interest. This is wider than at present as registration of spouse's and partner's interests in the register of members' interests will be required and it will be a criminal offence under the Act not to so register.



- 5.6 The draft code maintains the current provisions regarding personal and prejudicial interests and makes specific provision with regard to disclosable pecuniary interests to the extent required by the Act. Further provision may be required when the Regulations are published. Whatever the eventual definition for disclosable pecuniary interests it is considered that members will have wider interests which ought to be disclosed in the interests of transparency and in promoting and maintaining high standards of conduct. The present regime is understood and it is felt that to maintain that arrangement will be much simpler than introducing something entirely new in addition to all the new statutory provisions.
- 5.7 A member will have a statutory duty to register disclosable pecuniary interests within 28 days of becoming a member or when a member becomes aware of such interest and the Act makes it a criminal offence not to do so. The code extends the obligation to register to all interests, though criminal sanctions only extend to disclosable pecuniary interests.
- 5.8 Once interests are registered the Act does not oblige members to disclose the interests at meetings, but it is considered that disclosable pecuniary interests and prejudicial interests should be disclosed at all meetings. However it is not thought necessary for personal interests to be disclosed on every relevant occasion if those interests are registered, though members may disclose them if they wish.
- 5.9 The Act provides that where a member has a disclosable pecuniary interest he/she may not participate or vote at the meeting and must leave the room. It is a criminal offence not to do so. The provision is extended in the code to prejudicial interests (though there is no criminal sanction). The current limited scope for a member with a prejudicial interest to participate at a meeting to make representations or answer questions etc is retained.
- 5.10 It is no longer a legal requirement to undertake to adhere to the Code before a person can act as a member, but it is considered that members should be required to give a written undertaking to that effect as it emphasises to members the importance of the obligations which they undertake to meet.
- 5.11 The proposed code may need to be amended once Regulations are published and will need to be kept under review.

Arrangements for dealing with allegations that a member has failed to comply with the code

- 5.12 Attached at Appendix 2 are the proposed arrangements for dealing with allegations that a 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. It is intended to keep these arrangements under review in the light of practical experience of operating them.



- 5.13 Before decisions are made there is a requirement to consult and have regard to the views of the Council's Independent Person, a statutory appointment created by the Localism Act. A recruitment process compliant with the Act will be undertaken shortly so that the Full Council meeting in July can appoint an Independent Person.
- 5.14 The workload of the Independent Person cannot be anticipated at this stage as it will depend upon the number of allegations made and the seriousness of such allegations. Whilst it is not expected that the workload will be constant it could be quite concentrated over short periods of time. In any event the Council should recognise the contribution of the Independent Person making themselves available as and when required and it is proposed that the post holder be afforded remuneration of £1000 per annum. It is also proposed to appoint one or two deputies to the Independent Person who may be called upon in the event of the Independent Person being unavailable or conflicted. A deputy will only be called upon occasionally but for making themselves available in these circumstances it is proposed that a deputy be afforded a modest retainer payment of £250 per annum.

Standards Committee

- 5.15 Whilst the Localism Act abolishes the current Standards Committee with effect from the implementation of the new arrangements, the Council must decide whether to establish a new Committee charged with most of the functions currently undertaken save that it will not have any statutory duties. A new committee would be subject to the normal proportionality provisions and the present restriction for only one executive member on the committee will cease. There is no statutory requirement to appoint independent members though the Council could co-opt some or all of the current independent members if it wished to retain their experience. They would be non-voting members who would not be subject to any allowance under the Members' Allowances Scheme. Co-opted members cannot also be considered for appointment as an Independent Person. It is considered that the Standards Committee should be given the ability to appoint co-opted members, enabling it to decide whether or not it wishes to avail itself of the power. Power to appoint up to six co-opted members is provided for in the proposed terms of reference attached at Appendix 3.
- 5.16 The primary purpose of a newly formed Standards Committee would be to provide a focused lead on the promotion and maintenance of high standards of conduct whereby the Council will fulfil its statutory duty. One of the key roles will be the assessment and determination of allegations of failure to comply with the code of conduct and to assist in this it is proposed that sub-committees be appointed for the purposes of assessment of allegations and for the hearing and determination of allegations which are investigated. This is built into the arrangements attached at Appendix 2. If the Council decides not to establish a new Standards Committee, the duties set out in the proposed terms of reference will need to be delegated elsewhere.



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- 5.17 The establishment of a new code of conduct, a new Standards Committee with different membership and varied terms of reference and sub-committees and the new non-statutory regime in general necessitate various changes to the constitution, as attached at Appendix 4.
- 5.18 As the implementation date for the new ethical framework has not yet been announced, the Council will need to appoint a statutory Standards Committee on the existing terms of reference comprising 7 members and 6 independent members, one of whom must be appointed as Chair, to operate until the new ethical framework is brought into force. It should also appoint the new non-statutory Standards Committee on the basis of proportional representation to be established when the statutory committee is abolished.

6. Comments of the Chief Finance Officer and financial implications

- 6.1 The only direct financial implications are those arising from the changes to the remuneration payable to independent members of the current Standards Committee and that payable under the newly proposed Standards Committee. The existing fully year cost is £4962; that for the newly proposed Standards Committee is £2763 which represents a full year saving of £2199.

7. Head of Legal Services and legal implications

- 7.1 As this is a report from the Head of Legal Services and Monitoring Officer, the legal considerations and implications are dealt with in the body of the report and in the drafting of the Appendices. All legal aspects have been taken into account in the compilation of this report.

8. Equalities and Community Cohesion Comments

- 8.1 The Council has a public sector equality duty under S149 of the Equality Act 2010 to have due regard to need to:
- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - advance equality of opportunity between people who share those protected characteristics and people who do not;
 - foster good relations between people who those characteristics and people who do not.
- 8.2 Policy and Equalities Team have been consulted in the preparation of this report and they comment that the proposals outlined in this report carry no apparent implications for the any aspect of duty outlined above.

9. Head of Procurement Comments



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9.1 N/A

10. Use of Appendices

Appendix 1: Members' Code of Conduct

Appendix 2: Arrangements for dealing with allegations that a member or co-opted member of Haringey Council has failed to comply with the Members' Code of Conduct.

Appendix 3: Terms of reference of new Standards Committee and its Sub-Committees.

Appendix 4: Consequential amendments to the Constitution.

11. Local Government (Access to Information) Act 1985

11.1 There are no background documents to this report