

Report for:	Council 16 July 2012	Item Number:	
Title:	The Ethical Framework		
Report Authorised by:	Bernie Ryan Head of Legal Services and Monitoring Officer <i>Bernie Ryan</i>		
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Ward(s) affected:  N/A	Report for Key/Non Key Decisions:  N/A		

1. Describe the issue under consideration

- 1.1 At the Annual Meeting on 21 May 2012 the Council approved a new Members' Code of Conduct and Arrangements for dealing with allegations that a member has breached the code, to come into effect when the ethical framework enacted in the Localism Act 2011 was brought into force.
- 1.2 It was anticipated that the implementation date would be 1 July 2012 but Regulations were awaited and it was noted that the documents were likely to require amendment in the light of those Regulations.
- 1.3 The Regulations were made on 6 June and came into effect on 1 July. They define 'disclosable pecuniary interests', which form the basis of the statutory requirements and in consequence amendments to the code are required, the details of which are explained in the body of the report.
- 1.4 The Commencement Order which accompanied the Regulations made provision for the implementation of various sections of the Localism Act in such a way as to arguably invalidate those codes and arrangements approved ahead of the Order by many Councils including Haringey, and it is necessary to formally approve the Arrangements afresh in addition to approving the amended code.



1.5 Section 28 of the Localism Act requires the Council to appoint at least one 'Independent Person' following a public recruitment process, with the appointment receiving the approval of a majority of members of the Council. The recruitment process has been undertaken and a recommendation is made by the recruitment panel.

1.6 We are still awaiting Government guidance on issues such as disclosable pecuniary interests and given the timescale under which the Government has introduced these provisions and the levels of uncertainty that exist in relation to various aspects, it may be necessary to bring a further report on these matters to a later Council meeting

## **2. Cabinet Member introduction**

N/A

## **3. Recommendations**

3.1 It is recommended that with immediate effect:

- (i) The Members' Code of Conduct, attached at Appendix 1, be approved;
- (ii) The Arrangements for dealing with allegations that a member has failed to comply with the code, attached at Appendix 2, be approved;
- (iii) The terms of reference for the Standards Committee, Assessment Sub-Committee and Hearing Sub-Committee, attached at Appendix 3, be re-affirmed;
- (iv) The amendments to the Constitution consequential to the changes to the ethical framework, attached at Appendix 4, be approved;
- (v) Rachel Hatch and Christopher Watts be appointed as the Council's Primary and Secondary Independent Persons respectively for a period of four years pursuant to Section 28 of the Localism Act 2011;
- (vi) Remuneration for the Primary Independent Person be £1000 per annum and for the Secondary Independent Person £250 per annum from 1 July-30 June in any year, pro-rata from the date of appointment for 2012/13.

## **4. Other options considered**

The Council is under statutory duties to adopt a code and attendant arrangements and to appoint at least one Independent Person and this report makes recommendations to fulfil those duties. No alternative courses of action would meet the statutory requirements.



## 5. Background information

- 5.1 At the Annual Meeting on 21 May 2012 the Council approved a code of conduct and arrangements for dealing with allegations of failure to comply with the code, in prospect of the implementation of the ethical framework enacted in the Localism Act 2011. At that time Regulations were awaited to specify provisions not contained in the Act and to prescribe an implementation date.
- 5.2 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and The Localism Act 2011 (Commencement No 6 and Transitional, Savings and Transitory Provisions) Order 2012 were made on 6 June 2012. The Commencement Order took immediate effect and implemented the new ethical framework on 1 July 2012. The Regulations came into force on 1 July 2012.
- 5.3 As was anticipated, the Regulations do require some amendments to the code of conduct approved in May. Furthermore, due to the technical drafting of the Commencement Order, codes and arrangements which were approved prior to the Order by authorities, including Haringey, seeking to have the necessary documents in place to facilitate a seamless move to the new system upon implementation, may have been rendered invalid and the revised code and the attendant arrangements require fresh approval.

### Code of Conduct

- 5.4 One of the main aspects of the statutory requirements was the registration and disclosure of disclosable pecuniary interests which were not defined in the Act beyond stating that such interests were those of a member, a member's spouse or civil partner or a person living with a member as a spouse or civil partner. It was left to Regulations to provide the details of those interests. The Regulations define disclosable pecuniary interests and that definition is inserted in the code verbatim.
- 5.5 Other changes made to the code approved in May are consequential or for the purposes of clarity and simplicity, so far as that is possible.
- 5.6 Whilst the Localism Act made provision regarding the registration and disclosure of disclosable pecuniary interests, dealing with other interests was left to the discretion of authorities. The Council has determined to retain as much of the current system as is possible under the new regime as it is largely understood and also it maintains high standards of conduct and the code has been drafted with that in mind.
- 5.7 Changes to the version of the code approved in May are as follows:

#### Explanatory Note

The former introduction has been re-ordered somewhat but is substantially similar. The requirement for a written undertaking to observe the code has



been dropped as there is no longer a legal requirement for such an undertaking. This section includes a new clause stating that personal interests must be notified to the Monitoring Officer and declared at meetings only if prejudicial. The intention here is that whilst relevant personal interests should be disclosed in the Register of Members' Interests there would be no need to also make a declaration at a meeting unless the member concerned wishes to do so for the purposes of transparency.

1. The General Principles

No changes

2. Application of the Code

The only addition is the definition of a co-opted member as provided in the Localism Act.

3. General Obligations

No changes

4. Disclosable Pecuniary Interests

An additional paragraph has been added requiring members to fulfil all statutory obligations regarding the registration and disclosure of disclosable pecuniary interests and withdrawal from participation and voting.

5. Personal Interests

The scope of personal interests has been reduced significantly as many of the categories in the previous version of the code have become disclosable pecuniary interests. Disclosure for the Register of Members' Interests is limited to a range of outside bodies and to gifts and hospitality received of a value of at least £50. This is an increase from the previous limit of £25 set by the model code of conduct in 2000 and now outdated.

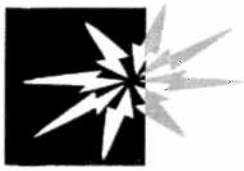
6. Prejudicial Interests

Re-drafted to make it easier to understand, though the provisions as to what turns a personal interest into a prejudicial one remain as previously.

7. Notification and registration of Members' Interests

The Localism Act requires the notification of disclosable pecuniary interests to the Monitoring Officer for entry onto the Register of Members' Interests within 28 days of becoming a member. That will not occur until after the next election in 2 years time so to ensure that an up to date register is established an additional provision has been included that notification of interests must be provided within 28 days of approval of the Code of Conduct i.e. by 12 August 2012.

A new paragraph has been added reminding members of their obligations to notify the Monitoring Officer of any disclosable pecuniary interest not registered or notified previously, within 28 days of making a declaration at a meeting and



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of the obligations when acting alone if a member becomes aware of any disclosable pecuniary interest. These are statutory requirements which carry criminal sanctions for failure to comply.

8.Sensitive Interests

No changes

9. Disclosure of Interests

Deletion of the paragraph requiring the declaration at meetings of personal interests not in the Register of Members' Interests whereby there is no mandatory disclosure of personal interests which are not prejudicial though members have a discretion to so declare if they wish.

Some paragraphs have been re-arranged to provide clarity.

10.Effect of disclosable pecuniary interest or prejudicial interest on participation

Minor drafting changes to provide clarity

Appendix A

A new appendix setting out in full the definition of disclosable pecuniary interests as provided in the Regulations.

Appendix B

A summary version of the criminal offences provided by the Localism Act for failure to comply with the various provisions.

5.8 The revised code contains all the statutory requirements in relation to disclosable pecuniary interests and in addition retains the essential basis of the current arrangements in respect of interests which are not disclosable pecuniary interests but should be registered or disclosed nevertheless, pursuant to the duty to promote and maintain high standards of conduct.

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

5.9 No change

Independent Persons

5.10 The Localism Act provides that all authorities must appoint at least one Independent Person whose views are to be sought and taken into account by the authority before it makes a decision on an allegation that it has decided to investigate and whose views may be sought by the authority upon an allegation at other stages of the process and by the member or co-opted member complained of.

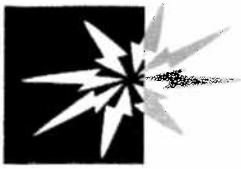


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- 5.11 The Act provides that anyone who is or has been a member, co-opted member or officer in the preceding 5 years is not eligible for appointment. The effect of this is to preclude the current Independent Members whose experience may be valuable to authorities and following representations from authorities and their representative bodies the Government has made transitional arrangements whereby a person who is not a member or co-opted member of the Standards Committee on 1 July 2012 but has held such a post during the 5 years ending on 30 June 2012 may be appointed prior to 1 July 2013. An Amendment Order was published on 2 July limiting the duration of any such appointment to not later than 1 July 2013, however if appointed before 24 July 2012 a former independent member can be appointed for such period as the authority thinks fit. As this meeting is on 16 July, the Council is at liberty to appoint the persons recommended for the term recommended below.
- 5.12 A person may not be appointed unless the vacancy has been advertised in such manner as the authority considers is likely to bring it to the attention of the public and the person has submitted an application.
- 5.13 In the report which was considered by Council on 21 May 2012, it was envisaged that one Independent Person would be appointed and also a Deputy to act in the event of the Independent Person being unavailable or conflicted. Annual remuneration of £1000 and £250 reflected the fact that the duties of the Independent Person would be much more extensive than the Deputy. However, the Act does not make provision for a Deputy to be appointed and consequently it will be necessary to appoint two Independent Persons though to distinguish between the level of duties and the remuneration it is proposed that they be designated Primary and Secondary Independent Persons.
- 5.14 A public advertisement was published on 25 May 2012 inviting applications by 15 June 2012 and a panel comprising the group whips and an independent member from the former Standards Committee interviewed candidates on 2 July 2012. The Panel recommends to Council that Rachel Hatch, formerly Independent Chair of the Standards Committee be appointed as Primary Independent Person and that Christopher Watts, formerly Independent Member of the Standards Committee be appointed as the Secondary Independent Person for a period of four years. The proposal to appoint for four years is consistent with the term of office of the former Independent Members and of elected members and is considered appropriate.

### Standards Committee

- 5.16 At the Annual Meeting the Council approved terms of reference for a new Standards Committee and attendant sub-committees to come into being upon the abolition of the statutory Standards Committee. In view of the legal complications over the approval of documents prior to the coming into effect of the new ethical framework, in order to remove any doubt over the validity of the approval of the



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terms of reference, the Council is invited to re-affirm its decision. The terms of reference are Appendix 3 attached and are unchanged.

### Consequential amendments to the Constitution

5.17 At the Annual Meeting in May 2012, the Council approved amendments to the Constitution consequential upon the changes to the ethical framework. These are attached at Appendix 4 with only one substantive change which provides that a member with a disclosable pecuniary interest or a prejudicial interest must, in addition to not participating or voting on the matter, must withdraw from the meeting room during the consideration of that business.

### **6. Comments of the Chief Finance Officer and financial implications**

6.1 There are no new financial implications arising from the contents of this report. The Chief Finance Officer confirms that there is budget to cover the remuneration of the primary and secondary independent persons set out in recommendation 3(vi).

### **7. Head of Legal Services and legal implications**

7.1 As this is the report of the Head of Legal Services and Monitoring Officer, all relevant legal implications have been taken into account in the compilation of this report and the drafting of the appendices.

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

8.1 The Council has a public sector equality duty under Section 149 of the Equality Act 2010 to have due regard to the need to:

- tackle discrimination and victimisation of persons that share the characteristics protected under Section 4 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 share 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**

N/A



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## **10. Use of Appendices**

Appendix 1: Members' Code of Conduct.

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

Appendix 3: Terms of reference of Standards Committee

Appendix 4: Consequential amendments to the Constitution.

## **11. Local Government (Access to Information) Act 1985**

11.1 There are no background papers to this report