

# Hearing Sub-Committee AGENDA

**DATE:** Wednesday 27 June 2012

**TIME:** 3.30 pm

**VENUE:** Committee Room 6,  
Harrow Civic Centre

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**MEMBERSHIP** (Quorum 3)

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**Chairman:** Mr D Lawrence

**Councillors:**

Brian Gate

Paul Osborn

**Contact:** Vishal Seegoolam, Senior Democratic Services Officer  
Tel: 020 8424 1883 E-mail: [vishal.seegoolam@harrow.gov.uk](mailto:vishal.seegoolam@harrow.gov.uk)

## **AGENDA - PART I**

### **1. APPOINTMENT OF CHAIRMAN**

To note that the Independent Member, Mr Derek Lawrence, will serve as Chairman of the Sub-Committee for this meeting.

### **2. DECLARATIONS OF INTEREST**

To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Sub Committee;
- (b) all other Members present in any part of the room.

### **3. HEARING SUB-COMMITTEE - TERMS OF REFERENCE (Pages 1 - 18)**

Report of the Director of Legal and Governance Services.

### **4. EXCLUSION OF PRESS AND PUBLIC**

To resolve that the press and public be excluded from the meeting for the following item of business, on the grounds that it involves the likely disclosure of confidential information in breach of an obligation of confidence, or of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972:

<u>Agenda Item No</u>	<u>Title</u>	<u>Description of Exempt Information</u>
5.	Complaint – Breach of Code of Conduct	Paragraph 7C – information presented to a Standards Committee or to a Sub-Committee of a Standards Committee set up to consider any matter under regulation 13 or 16-20 of the Standards Committee (England) Regulations 2008.

## **AGENDA - PART II**

### **5. COMPLAINT - BREACH OF CODE OF CONDUCT**

The report on behalf of the Monitoring Officer and all relevant information will be circulated at the meeting.

**REPORT FOR: HEARING SUB  
COMMITTEE**

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<b>Date of Meeting:</b>	27 June 2012
<b>Subject:</b>	Hearing Sub-Committee – Terms of Reference
<b>Responsible Officer:</b>	Hugh Peart, Director of Legal and Governance Services
<b>Exempt:</b>	No
<b>Enclosures:</b>	Appendix A – Terms of Reference Appendix B – Members Code of Conduct

**Section 1 – Summary and Recommendations**

This report details the role and responsibilities of this Sub-Committee in considering how the results of an investigation should be progressed. The investigation report and all information will be circulated on the day of the meeting.

**Recommendations:** The Committee is requested to consider and note its Terms of Reference as set out in Appendix A, together with the Members Code of Conduct at Appendix B before considering if an investigation should be progressed.

## **Section 2 – Report**

### **1. Background**

- 1.1 The Local Government and Public Involvement in Health Act 2007 came into force in October 2007. At its meeting on 5<sup>th</sup> June 2008 the Standards Committee agreed its revised Terms of Reference. It also established the Hearing Sub-Committee for the purposes of considering allegations referred to it following investigation that a Member or Co-opted Member has failed to comply with the Council's Code of Conduct (attached at Appendix B).

#### **Procedure on Referral to Sub-Committee Following Investigation**

- 2.1 This Hearing Sub-Committee is established to hold a consideration meeting.
- 2.2 The purpose of the consideration meeting is to allow the sub-committee to consider the report detailing an investigation into a complaint that a Member may or may not have breached the Code of Conduct. This report will be presented to the Sub-Committee at the meeting. The Sub-Committee will then have to make one of the following findings:
- (a) that it accepts the finding of no failure, or
  - (b) that the matter should be considered at a hearing of the standards committee, or
  - (c) that the matter should be referred to the Adjudication Panel for determination.
- 2.3 The sub-committee can only make a finding under sub-paragraph c if it determines that the action it could take against the member would be insufficient were a finding of failure to be made and the president or deputy president of the Adjudication Panel has agreed to accept the referral.

### **3. Legal Implications**

- 3.1 The Local Government and Public Involvement in Health Act 2007 places new obligations on the Standards Committee to deal with written allegations that a member or co-opted member may have failed to comply with the Code of Conduct. These powers are in addition to the powers under Part III of the Local Government Act 2000.

### **4. Financial Implications**

- 4.1 Any costs relating to this matter will be met from the provision for legal fees.

5. **Risk Management Implications**

5.1 Failure to consider the relevant complaint in accordance with the terms of reference of the Sub-Committee and relevant regulations could potentially lead to a breach of statutory requirements.

6. **Equalities implications**

6.1 There are no equalities implications associated with this report.

7. **Corporate Priorities**

7.1 The satisfactory dealing of allegations made against Members or Co-opted Members that they had failed to comply with the Council's Code of conduct contributes towards the Council's corporate priority of 'United and Involved Communities' A Council that Listens and Leads'.

### **Section 3 - Statutory Officer Clearance**

Name: Steve Tingle	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 11 October 2011		
Name: Jessica Farmer	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 17 October 2011		

### **Section 4 - Contact Details and Background Papers**

**Contact:** Vishal Seegoolam, Senior Democratic Services Officer Tel: 020 8424 1883 (ext 2883)

**Background Papers:** Local Government Act 2000  
Local Government and Public Involvement in Health Act 2007  
The Standards Committee (England) Regulations 2008  
Standards Board for England – Local Assessment of Complaints

If appropriate, does the report include the following considerations?

1.	Consultation	NO
2.	Corporate Priorities	NO

## TERMS OF REFERENCE

### HEARING SUB-COMMITTEE

The Hearing Sub-committee has the following powers and duties

- (a) To consider allegation referred to it following investigation that a member or co-opted member has failed to comply with the Council's Code of Conduct for Councillors
- (b) To determine whether
  - it accepts the Monitoring Officer's findings of no failure to observe the Code of Conduct
  - the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
  - that the matter should be referred to the Adjudication Panel for determination where it considers that the action it could take against the member is insufficient
- (c) Where the Sub-Committee resolves to do any of the actions set out in paragraph (b) above, the Sub-Committee shall state its reasons for that decision.

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## A. CODE OF CONDUCT FOR COUNCILLORS

This Code has been prepared and adopted by Harrow Council. Every Member (including co-opted members) has signed an undertaking to comply with it. The parts of the text printed in bold comprise the mandatory provisions; the rest comprises additional text approved by the Authority.

### Part 1

#### General provisions

##### Introduction and interpretation

- 1.1 This Code defines the standards of conduct, which will be required of you and in your relationships with the Authority and its Officers.
- 1.2 The Code represents the standard against which the public, fellow Councillors, the Standards Board and the Authority's Standards Committee will judge your conduct. A breach of the Code may also be deemed by the Ombudsman as incompatible with good administration, and may lead to a finding of maladministration against the Authority.
- 1.3 You should familiarise yourself with the requirements of this Code. You should regularly review your personal circumstances, particularly when those circumstances change. If in any doubt, you should seek advice from the Authority's Monitoring Officer.
- 1.4
  - (1) This Code applies to you as a member of an authority.**
  - (2) You should read this Code together with the general principles prescribed by the Secretary of State.**
  - (3) It is your responsibility to comply with the provisions of this Code.**
  - (4) In this Code –**
    - “meeting” means any meeting of -**
    - (a) the authority;**
    - (b) the executive of the authority;**
    - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;**

**“member” includes a co-opted member and an appointed member.**

**(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.**

## **Scope**

- 2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you -**
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or**
  - (b) act, claim to act or give the impression you are acting as a representative of your authority,**

**and references to your official capacity are construed accordingly.**

**(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.**

**(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.**

**(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).**

- (5) Where you act as a representative of your authority -**
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or**
  - (b) on any other body, you must, when acting for that other body, comply with your authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.**

### **General obligations**

- 3. (1) You must treat others with respect.**
- (2) You must not-**
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006**
  - (b) bully any person;**
  - (c) intimidate or attempt to intimidate any person who is or is likely to be**
    - (i) a complainant,**
    - (ii) a witness, or**
    - (iii) involved in the administration of any investigation or proceedings,****in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or**
  - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.**
- (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.**
- 4. You must not -**
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where -**
    - (i) you have the consent of a person authorised to give it;**
    - (ii) you are required by law to do so;**

**(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or**

**(iv) the disclosure is -**

**(aa) reasonable and in the public interest; and**

**(bb) made in good faith and in compliance with the reasonable requirements of the authority; or**

**(b) prevent another person from gaining access to information to which that person is entitled by law.**

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

**6.1 (1) You –**

**(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and**

**(b) must, when using or authorising the use by others of the resources of your authority -**

**(i) act in accordance with your authority's reasonable requirements;**

**(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and**

**(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.**

**6.2** You may have dealings with the Authority on a personal level, for instance as a council tax payer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in those dealings because of your position as a councillor. You should also avoid placing yourself in a position that could lead the public to think that you are receiving preferential treatment. Likewise, you should never use your position as a member to seek preferential treatment for friends or relatives, or any firm or body with which you are personally connected.

**6.3** You should always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the authority for your use in your duties as a Councillor or a committee member or member of the Executive are used strictly for those duties and for no other purpose.

**7.1 (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by –**

**(a) your authority’s chief finance officer; or**

**(b) your authority’s monitoring officer,**

**where that officer is acting pursuant to his or her statutory duties.**

**(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.**

**7.2 When reaching decisions you should -**

**(i) not act or cause the Authority to act unlawfully, in such a manner as would give rise to a finding of maladministration, in breach of any undertaking to the Court, or for the advantage of any particular person or interest rather than in the public interest; and**

**(ii) take into account all material information of which you are aware and then take the decision on its merits and in the public interest**

## **Part 2**

### **Interests**

#### **Personal interests**

**8. (1) You have a personal interest in any business of your authority where either -**

**(a) it relates to or is likely to affect -**

**(i) any body of which you are a member or in a position of general control or, management and to which you are appointed or nominated by your authority;**

**(ii) any body -**

**(aa) exercising functions of a public nature;**

**(bb) directed to charitable purposes; or**

**(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),**

- of which you are a member or in a position of general control or management;**
- (iii) any employment or business carried on by you;**
  - (iv) any person or body who employs or has appointed you;**
  - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;**
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);**
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);**
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;**
  - (ix) any land in your authority's area in which you have a beneficial interest;**
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;**
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or**
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of -**
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;**

**(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or**

**(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.**

**(2) In sub-paragraph (1)(b), a relevant person is -**

**(a) a member of your family or any person with whom you have a close association; or**

**(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;**

**(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or**

**(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).**

### **Disclosure of personal interests**

**9.1 (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.**

**(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.**

**(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.**

**(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.**

**(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.**

**(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.**

**(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.**

- 9.2 For the avoidance of doubt if you have a personal (but not prejudicial) interest and observe a meeting from the public gallery (or any part of the room or chamber) but do not address the meeting or take part in the discussion you are nevertheless deemed to be attending the meeting and are required to declare the interest.
- 9.3 Decision-making by a single executive member is a matter of particular sensitivity, and if you have a personal interest in a matter on which you may take a decision, even if it is not a prejudicial interest, you should wherever possible refer the matter to the Executive for a collective decision.

### **Prejudicial interest generally**

**10.1 (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.**

**(2) You do not have a prejudicial interest in any business of the authority where that business -**

**(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;**

**(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or**

**(c) relates to the functions of your authority in respect of -**

**(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;**

**(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;**



- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;**
- (iv) an allowance, payment or indemnity given to members;**
- (v) any ceremonial honour given to members; and**
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.**

10.2 If you are in any doubt as to whether you should continue to participate in any matter, you should

- (a) consider whether a member of the public - if he or she knew all the facts - would reasonably think that your personal interest was so important that your decision on the matter would be affected by it. If he or she would think that your judgement would be affected, then it is likely that you have a prejudicial interest; and
- (b) take advice from the Monitoring Officer at an early stage as to whether your circumstances permit continued participation.

10.3 You, or some firm or body with which you are personally connected may have professional, business or other personal interests within the area for which the Authority is responsible. Such interests may be substantial and closely related to the work of the Executive or one or more of the Authority's committees.

You should not seek, or accept, membership of the Executive or any such committee, if that would involve you in disclosing an interest so often that you could be of little value to the Executive or committee, or if it would be likely to weaken public confidence in the duty of the Executive or committee to work solely in the general public interest.

### **Prejudicial interests arising in relation to overview and scrutiny committees**

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where -

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and**
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.**

## **Effect of prejudicial interests on participation**

**12.1 (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority –**

**(a) you must withdraw from the room or chamber where a meeting considering the business is being held –**

**(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;**

**(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;**

**unless you have obtained a dispensation from your authority's standards committee;**

**(b) you must not exercise executive functions in relation to that business; and**

**(c) you must not seek improperly to influence a decision about that business.**

**(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.**

## **Part 3**

### **Registration of Members' Interests**

#### **Registration of members' interests**

**13. (1) Subject to paragraph 14, you must, within 28 days of –**

**(a) this Code being adopted by or applied to your authority; or**

**(b) your election or appointment to office (where that is later),**

**register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.**

**(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.**

### **Sensitive information**

**14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.**

**(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.**

**(3) In this Code, "sensitive information" means information whose availability or inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.**

## THE 10 GENERAL PRINCIPLES OF CONDUCT

Members are reminded of the 10 General Principles of Conduct (as set out below), which govern the conduct of members.

1. **Selflessness** - Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
2. **Honesty and Integrity** - Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
3. **Objectivity** - Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
4. **Accountability** - Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
5. **Openness** - Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
6. **Personal judgement** - Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
7. **Respect for others** - Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.
8. **Duty to Uphold the Law** - Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.
9. **Stewardship** - Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.
10. **Leadership** - Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.