

REPORT FOR: STANDARDS COMMITTEE

Date of Meeting: 14th December 2011

Subject: The Future of a Standards regime at
London Borough of Harrow

Responsible Officer: Hugh Peart, Director of Legal and
Governance Services

Exempt: No

Enclosures: App 1 Issues for the working group to
consider

 App 2 Current Code of Conduct

Section 1 – Summary and Recommendations

The Report addresses the options for maintaining high ethical standards in local government.

Recommendations:

That the Committee:-

- 1) Agree to continue with the member and officer working party to consider and produce recommendations about the type and content of a future standards regime.**
- 2) Comment on the proposed issues to be considered by the working group.**
- 3) The working party to report back to the Standards Committee.**

Section 2 – Report

1. At the Standards Committee in April 2011 Members received an up date of the main highlights to be included in the proposed Localism Bill together with suggestions relating to what could take the place of the current standards regime once the regime is abolished in 2012. Since then a member officer working group has been set up and has met on one occasion. The Localism Bill has now received royal assent and is now an Act. The Act is fundamentally different to the Bill and there is now a requirement for the council to have a code of conduct.
2. Members at past meetings have raised a number of issues which they felt needed to be addressed. These issues were:-
 - 2.1 there was a view that Independent Members should be retained by any future Standards Committee to ensure objectivity and impartiality;
 - 2.2 the Council could set its own standards and if there were any misdemeanours, there could be a public rebuke which would cause embarrassment for the Member concerned;
 - 2.3 it was important for residents to feel confident that any complaint made against a Member, was dealt with comprehensively;
 - 2.4 there was a desire not to be influenced by other authorities who may not wish to adopt a voluntary code of conduct or Standards Committee in the future.
3. **Main provisions of the Localism act in relation to the Standards regime**

In the House of Lords, the Government brought forward extensive amendments to the Bill. Essentially, the standards provisions which were in the Local Government Act 2000 have been restricted in their application to local authorities in Wales. So the new standards provisions relating to local authorities in England and police authorities in Wales are the provisions as set out in Clauses 27 - 37 of, and Schedule 4 to, the Localism Act. These provisions apply to all "relevant authorities", which are defined in Clause 27(4) to include both principal authorities and parish councils.

4. Implementation Date

This is due to be 1 April 2012 subject to a 2 month transitional period for resolving all outstanding complaints under the old regime.

5. Duty to promote and maintain high standards of conduct S 27

Every authority will be under a duty to promote and maintain high standards of conduct by elected and co-opted members of the authority. The definition of "co-opted member" is narrowed to apply to members of committees and sub-committees, but only those who have a power to vote on any matter, so not applying to non-voting members. If an authority wishes to retain co-opted independent members on a new non-statutory Standards Committee, such co-opted members can only be co-opted as non-voting members, and so would not be covered by the authority's new Code of Conduct.

6. Standards Committees

The provisions for the establishment of statutory Standards Committees (s.55 of the LGA2000) are omitted. Accordingly, when an authority can and wishes to delegate any standards functions to a committee or sub-committee, that would be an ordinary committee or sub-committee established under s.102 of the LGA 1972. That means:

- 6.1 The new Independent Persons would not be able to be voting members unless the committee or sub-committee was merely advisory (i.e. recommending to Council);
- 6.2 Any such Standards Committee is now subject to the normal proportionality rules;
- 6.3 Standards Committees would be subject to the same requirements on confidential and exempt information under ss.100A to K of, and Sch.12A to, the LGA 1972 as any other Committee. This means that the initial assessment process would only be confidential if one of the current part II rules apply.

7. Codes of Conduct S28

When the relevant part of the Localism Act comes into force this will mean that the Council's current code and councillor's declarations to comply with it will cease to have effect. Each authority is required to adopt a Code of Conduct, which can only apply to members and co-opted members when acting in their capacity as a member or co-opted member. The General Principles and the Model Code are revoked, but an authority's code must be consistent with seven principles, which are similar to the ten General

Principles that we had before, and must also provide for the registration of non-disclosable pecuniary interests and non-pecuniary interests. Otherwise, authorities are free to determine what they put in or leave out of a Code. Any decision to adopt or not to adopt a local code must be taken at full Council, and all standards matters are to be non-executive functions. The closer any new code is to the current code the more likely the council will be able to use the body of case law which has built up over the last few years.

8. The 7 new principles are:

Selflessness
Integrity
Objectivity
Accessibility
Openness
Honesty
Leadership

9. They do not include:

Personal judgement
Respect for others
Duty to uphold the law, and
Stewardship

The abolition of the Model Code means that different authorities may have very different Codes. A councillor who is a member of more than one authority is likely to be subject to different Codes, according to whether he/she is currently acting on this or that authority. It is understood that ACSes is developing a model code and when it is available it will be drawn to the attention of the working group.

10. Breach of Code

The council, is under a duty to “have in place arrangements” to deal with complaints of breach of the Code. This must comprise arrangements for investigation of complaints and arrangements “under which decisions on allegations can be made”. Notably, the requirement for members to give any undertaking to comply with the Code of Conduct is repealed. However the council could develop a local arrangement so that all councillors sign up to the new code.

10.1 The key differences from the previous regime are:

The council is able to set their own processes to replace the Review and Assesment sub committees and to delegate more of the process.

It would be possible for an authority to delegate the initial assessment and decision whether to investigate to the Monitoring Officer, after consultation with the Independent Person. There is no requirement for a review stage. Indeed the statutory requirement for a hearing disappears.

- 10.2 It is unlikely that authorities will be prepared to delegate substantive decisions to Monitoring Officers, and full Council would be inappropriate as a forum for conducting such a hearing, so it is likely that most authorities will need a Standards Committee or Hearings Sub-committee of some nature to undertake these functions at member level. The abolition of Statutory Standards Committees in England means the removal of the exclusion of Assessment and Review Sub-committees from public access to information provisions. As normal Section 101 Committees, they are now subject to the normal rules, so that their agenda and reports must be published five clear days before the meeting, and the meetings must be conducted in public unless there are over-riding reasons to the contrary. That also removes the ability for the Hearings Panel to withdraw when considering its verdict.
- 10.3 There is greater scope to enable the Monitoring Officer to seek local resolution of a complaint before a decision is taken as to whether the complaint merits investigation.
- 10.4 This may enable the more minor or tit-for-tat complaints to be taken out of the system without the full process previously required. The Act gives no powers to undertake investigations or to conduct hearings. So there is no power to require access to documents or to require members or officers to attend interviews, and no power to require the member to attend a hearing. The Act gives authorities no powers to take any action in respect of a breach of the local Code. Amendments which would have given authorities an express power to suspend a member from Committees for up to 6 months were never moved, and the Secretary of State suggested in debate that authorities could do so under existing powers. However such removal would require the consent of the member's group leader. Alternative sanctions may as now be given as a sanction, such as suggesting but not requiring an apology or training. Also naming and shaming the individual member would be available
- 10.5 In the Local Government Act 2000, the power of sanction came as part of a package with the safeguards to ensure that such power was exercised fairly. Without the procedural requirements (notably Independent members of Standards Committees, and the requirement that such decisions be taken by Standards Committees

or Sub-Committees), The fact that authorities must define standards of conduct in their local code, and must consider and investigate breaches of Code, is likely to give rise to a degree of frustration when a member is found to have been in flagrant breach of the local code, perhaps for personal advantage and to the detriment of the authority and of the public interest, even causing considerable damage to the authority and to individuals, and yet the authority has no ability to impose sanctions or to prevent the member continuing to act in exactly the same manner.

11. Independent Persons (IP)

The Bill was amended to require every principal authority to appoint one or more IPs. IPs would be appointed by advertisement and application, and there are very strict rules preventing a person from being appointed if they are a friend or relative to any member or officer of the authority, or of any Parish Council within the authority's area. In particular, the Act provides that a person cannot be appointed as an IP if they have within the past 5 years been a co-opted voting member of a Committee of the authority. This means that all existing independent co-opted members of Standards Committees are ineligible to be appointed as an IP although they could be co-opted non voting members

The IP must be consulted before the authority takes a decision to investigate any allegation. So it is possible to delegate this decision to the Monitoring Officer after consulting the IP. The IP may be consulted by a member of the authority against whom an allegation has been made. But, if they were so consulted they would no longer be impartial and would not be able to participate impartially in the determination of that allegation. The authority can pay the IP expenses and an allowance.

12. Registers of members' interests s29

12.1 The Monitoring Officer is required to establish a register of members' interests for each authority and to define what interests must be registered. The content of any such register must be approved by full Council. It must contain "disclosable pecuniary interests" (which will be defined in regulations) but the Act also provides that an authority's Code must require registration of non-disclosable pecuniary interests and non-pecuniary interests, for which no definition is provided. It is hoped that definitions will be provided in regulations.

12.2 The Monitoring Officer is responsible for ensuring that each authority's register of interests is kept within the principal authority's area (e.g. at the principal authority's offices) and on the authority's website. Every elected or co-opted member is required to notify the

Monitoring Officer within 28 days of being elected or co-opted onto the authority of all current “disclosable pecuniary interests of which they are aware, and update the register within 28 days of being re-elected or re-appointed. There is no continuing duty to update the register due to a change of circumstances. The Secretary of State will prescribe by regulation what constitutes a “disclosable pecuniary interest”. The Act provides that this will cover the interests not just of the member, but also of his/her spouse, civil partner or person with whom he/she lives as if they were spouses or civil partners, in so far as the member is aware of his/her partner’s interests. Failure to register any such interest, to do so within 28 days of election or co-option, for the provision of misleading information on registration without reasonable excuse will be a criminal offence, potentially carrying a Scale 5 fine (this is currently £5,000) and/or disqualification from being a councillor for up to five years. Prosecution is only at the instance of the Director of Public Prosecutions.

- 12.3 Once a member has made the initial registration, there is no requirement to update such registrations for changes of circumstances, such as the acquisition of development land, unless and until a relevant item of business arises at a meeting which the member attends.

13. Disclosures of Interests at Meetings S31

- 13.1 The requirement for disclosure of interests at meetings applies to the same range of "disclosable pecuniary interests" as the initial registration requirement, plus any non-disclosable pecuniary interests and non-pecuniary interests which the authority’s Code requires to be disclosed. However, the duty to disclose only arises if the member is aware of the interest. The Act requires the disclosure of the interest, rather than the existence and nature of the interest, although the provisions on sensitive interests imply that the member must still disclose both existence and nature. Where the interest is already on the authority's register of interests, or is in the process of entry onto the register having been notified to the Monitoring Officer, the member is under no obligation to disclose the interest at the meeting, so members of the public attending meetings might well not be aware of a member's interests in a matter under debate unless he/she had also previously inspected the authority's register. This inconsistency could be rectified in the council’s rules of procedure.
- 13.2 Where it is an unregistered interest, the member is required both to disclose it at the meeting and to register it within 28 days of the

meeting at which relevant business is considered. The duty to disclose arises if the member attends the meeting, as opposed to the present code requirement to disclose before the start of consideration of the matter in which the member has an interest. This would appear to mean that the member cannot avoid the need to disclose merely by withdrawing during that part of the meeting when the particular item of business is considered. If he/she attends any part of the meeting and a relevant item of business is to be considered, he/she must make disclosure.

- 13.3 Failure to disclose a disclosable pecuniary interest is made a criminal offence. There is no such sanction for failing to disclose non-disclosable pecuniary interests or non-pecuniary interests, even where disclosure is required by the authority's Code of Conduct.

14. Prohibition on participation s31

14.1 The concept of a prejudicial interest, which requires disclosure and withdrawal, is carried forward to cover a member's disclosable pecuniary interest in any item of business at a meeting, or in any matter which he/she would deal with as a single executive member or ward councillor. If he/she has a disclosable pecuniary interest in such a matter, he/she is simply barred from participating in discussion or voting on the matter at the meeting, or (as a single member) taking any steps in respect of the matter other than referring it to someone else for determination.

14.2 The sole exception to this exclusion arises as a result of a dispensation, so that the right of a councillor to speak as a member of the public and then depart for the consideration of the matter under para.12(2) appears to have been lost. Participation in the discussion of the matter, or taking steps in respect of the matter, in the face of these prohibitions is made a criminal offence. The equivalent of merely personal interests, requiring disclosure but not withdrawal, would be provided by the requirement for the authority's Code to make some provision for disclosure of non-disclosable pecuniary interests and of non-pecuniary interests.

15. Exclusion from the meeting

The requirement for the member to withdraw from the meeting room is not set out on the face of the statute, but the statute provides that it may be dealt with in the authority's rules of procedure.

16. Sensitive Interests s32

Members can ask the Monitoring Officer to exclude from the public register any details which, if disclosed, might lead to a threat of violence or intimidation to the member or any person in the member's household, and allowing the member merely to recite at the meeting that he /she has a disclosable pecuniary interest, rather than giving details of that interest. The scope of sensitive interests is slightly extended, from the member and members of his/her household, to cover "any person connected with the member".

17. Dispensations S 33

The current rules of dispensations are:

- 17.1 The first ground for a dispensation, that more than 50% of the members of the body were conflicted out, did not work because members rarely knew how many members would be conflicted out in sufficient time to allow for convening Standards Committee.
- 17.2 The second ground, that it would disturb the political composition of the meeting and so affect the outcome of the vote, required that the applicant knew in advance how each member would vote.
- 17.3 Now the grounds on which a dispensation may be granted are extended, and the power to grant a dispensation can be delegated, for example to the Monitoring Officer, enabling dispensations to be granted at relatively short notice.
- 17.4 The first ground (above) remains, but now effectively restricted to a circumstance where the number of members unable to participate would make the meeting inquorate. The second ground remains unchanged but now dispensations may also be granted if: every member of the authority's executive is otherwise precluded from participating it would be in the interests of persons living in the authority's area; and the authority considers that it is otherwise appropriate to grant a dispensation.

18. Transitional provisions S 37

The Act makes provision for the Secretary of State to make transitional provisions by statutory instrument, providing that matters under investigation by the Standards Board be transferred to the local authority. The Government previously published proposals under which authorities would have a period of two months from the implementation of the Act to resolve all outstanding complaints.

19. Risk Management Implications

Failing to stay informed about developments in the standards framework may impact on the ability of the Standards Committee to perform its role to a high standard and plan for the future.

20. Relevant Objectives of the Standards Committee

This report contributes towards the objective of “Internal Control” to ensure strong ethical governance is in place.

21. Corporate Priorities

This Report is relevant to the corporate priority to united and individual communities: a council that listens and leads.

22. Financial Implications

There are no financial implications currently identifiable, although it is possible that changes to the standards regime would have cost implications. These would be subject to further reports before implementation.

Section 3 - Statutory Officer Clearance

Name: Steve Tingle	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 3.12.2011		
Name: Jessica Farmer	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 3.12. 2011		

Section 4 - Contact Details and Background Papers

Contact:

Jessica Farmer, Head of Legal Services – Legal Services, 0208 420 9889
Vishal Seegoolam, Senior Democratic Services Officer, 020 8424 1883

Background Papers: None

If appropriate, does the report include the following considerations?

1.	Consultation	NO
2.	Corporate Priorities	YES

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Appendix 1

Possible issues for the Working Group to Consider

1. Does the council wish to improve of Paragraphs 3-7 of the Model Code?
2. Does the council wish to adopt a totally new Code?

1. Withdrawal from meetings

- 1.1 Does the council wish to recommend a new Rule of Procedure to Council for approval?
- 1.2 Should members withdraw for Disclosable Pecuniary Interests, or all Pecuniary Interests?
- 1.3 Should withdrawal preclude the member from sitting in the public gallery for that item of business?

2. Independent Persons

- 2.1 What role do we expect Independent Persons to play?
- 2.2 How many independent Persons do we need?
- 2.3 Should the independent Persons be co-opted as non-voting members of a new Standards Committee?
- 2.4 What allowances should the Independent Persons receive?

3. Standards Committee

- 3.1 Do we need a Standards Committee?
- 3.2 Who should it comprise? Particularly, should it include co-opted Independent Persons

4. Allegations

- 4.1 Who should take the decision whether an allegation merits investigation?
 - a) Standards Committee
 - b) A Sub-committee of Standards Committee?
 - c) The Monitoring Officer (perhaps after consultation with the Independent Person and/or the Chair of Standards Committee)

5. Procedures

- 5.1 Where an investigation finds evidence of misconduct, should the matter go direct to a hearing?

5.2 Should any hearing be conducted by –

- a) Standards Committee
- b) A Hearings Panel

5.3 What sanctions should the hearing be able to impose?

6. Dispensations

6.1 Who should receive requests for dispensations?

6.2 Who should have power to grant dispensations?

- a) Standards Committee
- b) A Dispensations Panel
- c) The Monitoring Officer (perhaps after consultation with the Independent Person and/or Chair of Standards Committee)

6.3 How can we secure the co-operation of the Police?